



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

**United Nations High Commissioner for Refugees (UNHCR)  
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## NOTE

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

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

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## I. Introduction

These Guidelines are issued in the context of the improved human rights and security situation following the end of the armed conflict between the Sri Lankan Army (SLA) and the Liberation Tigers of Tamil Eelam (LTTE) in May 2009, and are intended for the use of UNHCR and State adjudicators in the assessment of claims by Sri Lankan asylum-seekers.<sup>1</sup> They supersede the April 2009 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka* and the subsequent *Note on the Applicability of the 2009 Sri Lanka Guidelines*.<sup>2</sup>

The Guidelines contain information on the particular profiles for which international protection needs may arise in the current context. Given the cessation of hostilities, Sri Lankans originating from the north of the country are no longer in need of international protection under broader refugee criteria or complementary forms of protection solely on the basis of risk of indiscriminate harm. In light of the improved human rights and security situation in Sri Lanka, there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country. It is important to bear in mind that the situation is still evolving, which has made the drafting of these Guidelines particularly complex.

## II. Background Information

On 19 May 2009, the Government of Sri Lanka formally declared victory over the LTTE after capturing the last LTTE-controlled territories in the north of the country.<sup>3</sup> This marked the end of a 26-year non-international armed conflict.

At the time of writing, the security situation in Sri Lanka had significantly stabilized, paving the way for a lasting solution for hundreds of thousands of internally displaced persons (IDPs) in the country's north and east. In August 2009, the Sri Lankan Government began to organize the return or release from IDP camps of some 280,000 persons, who were forced to flee their homes during the final phase of the conflict.<sup>4</sup> Many of the initial restrictions on the freedom of movement of IDPs have been lifted,<sup>5</sup> and by mid-June 2010, approximately 246,000 persons had left the displacement camps to return to their places of origin or live with host families, relatives and friends. More returns are expected to take place within the coming weeks and months. A number of those who left the camps remain, however, in a situation of displacement due to the total or partial destruction of their homes and the ongoing de-mining operations.<sup>6</sup> Furthermore, IDP return has in some cases been hindered by land disputes arising from a number of issues, such as secondary occupation; the occupation of land by the

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<sup>1</sup> These Guidelines are based on information available to UNHCR as of May 2010, unless otherwise stated.

<sup>2</sup> UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, April 2009, <http://www.unhcr.org/refworld/docid/49de0b6b2.html>; and UNHCR, *Note on the Applicability of the 2009 Sri Lanka Guidelines*, July 2009, Rev., <http://www.unhcr.org/refworld/docid/4a6817e22.html>.

<sup>3</sup> The Official Website of Mahinda Rajapaksa Presidential Campaign 2010, *Address by HE President Mahinda Rajapaksa at the ceremonial opening of Parliament, Sri Jayawardhanapura – Kotte*, 19 May 2009, <http://www.mahinda2010.lk/ceremonial-opening-of-parliament-may-2009.html>; and BBC News, *Country profile: Sri Lanka*, last updated on 5 May 2010, [http://news.bbc.co.uk/2/hi/south\\_asia/country\\_profiles/1168427.stm](http://news.bbc.co.uk/2/hi/south_asia/country_profiles/1168427.stm).

<sup>4</sup> See, for example, Human Rights Watch, *World Report 2010 - Sri Lanka*, 20 January 2010, <http://www.unhcr.org/refworld/docid/4b586ce080.html>.

<sup>5</sup> In December 2009, for example, a pass system was put in place to allow IDPs to leave camps for a period of up to two weeks. It was, however, reported that the implementation of the pass system differed in the various camps and that persons suspected of LTTE affiliations were denied passes altogether; see Internal Displacement Monitoring Centre, *Global Overview of Trends and Developments in 2009 - Sri Lanka*, 17 May 2010, <http://www.unhcr.org/refworld/docid/4bf2526cd.html>.

<sup>6</sup> The Government has announced plans to resettle all the remaining IDPs of the north by September 2010 and to close all “welfare villages” in the same timeframe; see The Official Government News Portal of Sri Lanka, *Gradual shutting down of welfare villages takes place*, 28 May 2010, [http://www.news.lk/index.php?option=com\\_content&task=view&id=15487&Itemid=44](http://www.news.lk/index.php?option=com_content&task=view&id=15487&Itemid=44). See also UNHCR, *Sri Lanka: returns and shelter grants restart*, 27 April 2010, <http://www.unhcr.org/4bd6d3226.html>. Over 60,000 Muslim IDPs remained displaced in Puttalam, 20 years after being forced out of the north and north-west by the LTTE in 1990; see Internal Displacement Monitoring Centre, *Global Overview of Trends and Developments in 2009 - Sri Lanka*, 17 May 2010, <http://www.unhcr.org/refworld/docid/4bf2526cd.html>. In December 2009, the Government announced that it would start resettling more than 100,000 Muslim IDPs from camps in Uttalam to their places of origin; see IRIN, *Sri Lanka: Difficult homecoming for Muslim IDPs*, 22 March 2010, <http://www.unhcr.org/refworld/docid/4bb06c8414.html>.

military and LTTE during the conflict, including the arbitrary seizure of land belonging to Muslims by the LTTE in the north and east; the establishment of High Security Zones (HSZ) and Special Economic Zones (SEZ); and the loss of documentation.<sup>7</sup>

Other measures taken by the Government since the end of the conflict, such as the relaxation of emergency legislation, marked a shift towards a peacetime agenda. Restrictions on the freedom of movement have also been eased as a consequence of the improvement in the security situation.<sup>8</sup> However, other security measures, including military/police checkpoints along the main roads and a highly visible military presence, continue to be maintained throughout the country,<sup>9</sup> reportedly to prevent the re-establishment of the LTTE by cadres still at large.<sup>10</sup>

Sri Lanka has experienced significant political developments during the first half of 2010. The country went to the polls in January to elect a new president,<sup>11</sup> and in April to elect the first Parliament of the post-conflict era.<sup>12</sup> Furthermore, some areas of the north such as Kilinochchi and Mullaitivu districts that had previously been under the control of the LTTE for decades are now governed by the central authorities.

In response to calls for an independent international investigation into allegations of human rights and international humanitarian law violations by the parties to the conflict,<sup>13</sup> the Government of Sri Lanka has recently announced the establishment of a truth and reconciliation commission mandated to examine the “lessons to be learnt from events” between February 2002 and May 2009.<sup>14</sup> On 22 June 2010, the UN Secretary-General also appointed a Panel of Experts mandated to advise on the issue of

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<sup>7</sup> Thousands of IDPs displaced from Jaffna and Trincomalee Districts pre-2008 remain unable to return due to the fact that their areas of origin had been designated as HSZ; see Internal Displacement Monitoring Centre, *Global Overview of Trends and Developments in 2009 - Sri Lanka*, 17 May 2010, <http://www.unhcr.org/refworld/docid/4bf2526cd.html>; and Centre for Policy Alternatives, *Land in the Eastern Province: Politics, Policy and Conflict*, 13 May 2010, [http://www.cpalanka.org/file.download.php?fileName=attach/722/Land in the Eastern Province- Politics, Policy and Conflict.pdf](http://www.cpalanka.org/file.download.php?fileName=attach/722/Land%20in%20the%20Eastern%20Province-%20Politics,%20Policy%20and%20Conflict.pdf). In the northern Jaffna Peninsula alone, 15 High Security Zones have reportedly been established since the 1990s, covering 160 square kilometres or 18 percent of the peninsula’s land mass; see Sujewa Amaranath, *Sri Lanka: Permanent military occupation of the North and East*, 23 March 2010, <http://www.wsws.org/articles/2010/mar2010/sril-m23.shtml>. Following the parliamentary elections in April 2010, the local Government in Jaffna has promised to gradually remove the HSZs; see AsiaNews, *Government promises to remove the High Security Zone. Hopes for Tamil refugees*, 13 April 2010, <http://www.asianews.it/news-en/Government-promises-to-remove-the-High-Security-Zone.-Hopes-for-Tamil-refugees-18130.html>. The right to property restitution or adequate compensation is enshrined in the Pinheiro Principles; see UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, 28 June 2005, principle 2.1, <http://www.unhcr.org/refworld/docid/41640c874.html>.

<sup>8</sup> For example, in July 2009, the A9 Jaffna-Kandy highway, the only land route connecting the capital with the northernmost part of the country, was reopened; see Freedom House, *Freedom in the World 2010 - Sri Lanka*, 1 June 2010, <http://www.unhcr.org/refworld/docid/4c1a1e9b25.html>.

<sup>9</sup> Roadblocks may, reportedly, be established without warning; see Australia Department of Foreign Affairs and Trade, *Sri Lanka: Travel Advice*, current as of 17 June 2010, [http://www.smartraveller.gov.au/zw/cgi/view/advice/sri\\_lanka](http://www.smartraveller.gov.au/zw/cgi/view/advice/sri_lanka).

<sup>10</sup> In January 2010, President Rajapaksa stated that Sri Lanka still faced a severe threat from separatists, although the LTTE had been militarily crushed. Some LTTE cadres were believed still to be at large and to account for as many as 10 percent of the total population in Jaffna District. See South Asia Intelligence Review (SAIR) of the South Asia Terrorism Portal (SATP), *LTTE: Diaspora Wars*, 14 June 2010, <http://www.satp.org/satporgtp/sair/#assessment1>.

<sup>11</sup> Incumbent President Rajapaksa won 57.88 percent of the votes, whilst former Commander of the SLA, General Fonseka, obtained 40.15 percent; see Sri Lanka Department of Elections, *Presidential Election 2010 – Official Results*, accessed 29 May 2010, <http://www.slelections.gov.lk/presidential2010/AIVOT.html>. The elections were largely peaceful, although there were some reports of some post-election violent incidents between party activists, resulting in one death and some injuries; see Commonwealth Secretariat, *2010 Sri Lanka Elections - Final Report*, 15 February 2010, [http://www.thecommonwealth.org/document/181889/34293/35144/220094/final\\_report\\_sri\\_lanka\\_cet.htm](http://www.thecommonwealth.org/document/181889/34293/35144/220094/final_report_sri_lanka_cet.htm).

<sup>12</sup> The ruling United People’s Freedom Alliance (UPFA) coalition won 144 of 225 seats, representing 60 percent of the vote; see International Crisis Group, *Crisis Watch No. 81*, 1 May 2010, <http://www.crisisgroup.org/-/media/Files/CrisisWatch/2010/cw81.ashx>; and The Island, *UPFA bags Kandy, Trinco, bolsters its historic win*, 21 April 2010, <http://www.island.lk/2010/04/21/news18.html>.

<sup>13</sup> See, for example, Amnesty International, *UN must investigate Sri Lanka rights violations*, 17 May 2010, <http://www.amnesty.org/en/for-media/press-releases/un-must-investigate-sri-lanka-rights-violations-2010-05-17>; US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>; and Human Rights Watch, *World Report 2010 - Sri Lanka*, 20 January 2010, <http://www.unhcr.org/refworld/docid/4b586ce080.html>.

<sup>14</sup> For further information, see the Official Government News Portal of Sri Lanka, *‘101 East’, Al Jazeera interview transcript*, 27 May 2010, [http://www.news.lk/index.php?option=com\\_content&task=view&id=15477&Itemid=52](http://www.news.lk/index.php?option=com_content&task=view&id=15477&Itemid=52); IRIN, *Sri Lanka: Truth commission dogged by scepticism*, 19 May 2010, <http://www.unhcr.org/refworld/docid/4bf633a217.html>; Human Rights Watch, *Sri Lanka: Government Proposal Won’t Address War Crimes*, 7 May 2010, <http://www.unhcr.org/refworld/docid/4be90b752c.html>; and Amnesty International, *Twenty Years of Make-Believe: Sri Lanka’s Commissions of Inquiry*, June 2009, <http://www.amnesty.org/en/library/asset/ASA37/005/2009/en/c41db308-7612-4ca7-946d-03ad209aa900/asa370052009eng.pdf>.

accountability with regard to any alleged violations of international human rights and humanitarian law during the final stages of the conflict in Sri Lanka.<sup>15</sup>

The end of the armed conflict and the significantly improved security conditions throughout the country have resulted in a reduction in the number of Sri Lankans seeking international protection in industrialized countries. During the period from January to June 2010, 2,947 asylum applications have been registered – compared to 4,573 applications registered during the same period in 2009 – representing a 35 percent decrease.<sup>16</sup>

### III. Eligibility for International Protection

The status of recognized refugees should be reviewed only if there are indications, in an individual case, that there are grounds for cancellation of refugee status which was wrongly granted in the first instance; revocation of refugee status on the grounds of Article 1F of the 1951 Convention; or cessation of refugee status on the basis of Article 1C(1-4) of the 1951 Convention relating to the Status of Refugees (1951 Convention). UNHCR considers that the current situation in Sri Lanka, although significantly improved in the last twelve months, does not yet warrant cessation of refugee status on the basis of Article 1C(5) of the 1951 Convention.

All claims by asylum-seekers from Sri Lanka should be considered on their individual merits in fair and efficient refugee status determination procedures and taking into account up-to-date and relevant country of origin information. UNHCR considers that, depending on the particular circumstances of the case, some individuals with profiles similar to those outlined below require a particularly careful examination of possible risks. This listing is not necessarily exhaustive and is based on information available to UNHCR at the time of writing, hence a claim should not automatically be considered as without merit because it does not fall within any of the profiles identified below. Some of the claims lodged by asylum-seekers from Sri Lanka will require examination of possible exclusion from refugee status.

#### A. Potential Risk Profiles

##### 1. Persons Suspected of Having Links with the Liberation Tigers of Tamil Eelam (LTTE)

In the wake of the conflict, almost 11,000<sup>17</sup> persons suspected of LTTE links were arrested and detained in high-security camps, while over 500 former child soldiers<sup>18</sup> were transferred into rehabilitation centres.<sup>19</sup> By the end of May 2010, all former LTTE-associated child soldiers had

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<sup>15</sup> UN, *Secretary-General Names Panel of Experts to Advise on Accountability for Possible Rights Violations during Sri Lanka Conflict*, 22 June 2010, <http://www.un.org/News/Press/docs/2010/sgsm12967.doc.htm>. The establishment of the Panel was considered “as an unwarranted and unnecessary interference with a sovereign nation” by the Sri Lanka Government; see the Official Website of the Government of Sri Lanka, *Govt. opposes UN Panel*, 23 June 2010, [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201006/20100623govt\\_opposes\\_un\\_panel.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca201006/20100623govt_opposes_un_panel.htm).

<sup>16</sup> According to statistics compiled by UNHCR in relation to 44 industrialized countries in Europe, North America, Oceania and Asia. Figures valid as of 30 June 2010.

<sup>17</sup> According to a Government survey, as of 1 March 2010, 10,781 LTTE cadres were being held at 17 centres. Among the detainees were 8,791 males and 1,990 females; see Sri Lanka Ministry of Defence, *Survey reveals how Tigers threw untrained children into Vanni battle*, 15 March 2010, [http://www.defence.lk/new.asp?fname=20100315\\_08](http://www.defence.lk/new.asp?fname=20100315_08).

<sup>18</sup> Recruitment of child soldiers, often forcibly, was practiced by both the LTTE and the Tamil Makkal Viduthalai Pulikal (TMVP), a break-away group from the LTTE that aligned itself with the Government during the last phase of the conflict; see International Crisis Group, *War Crimes in Sri Lanka*, 17 May 2010, <http://www.unhcr.org/refworld/docid/4bf13c072.html>; and Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Mission Report: Visit of Major General (ret.) Patrick Cammaert, Special Envoy of the Special Representative for Children & Armed Conflict, to Sri Lanka, 05-11 December 2009*, 20 February 2010, [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/SNAA-83W4HH-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/SNAA-83W4HH-full_report.pdf/$File/full_report.pdf). The LTTE allegedly recruited and abducted thousands of children throughout the conflict, some as young as 11 years, to serve in combat and in various battlefield support functions; see Coalition to Stop the Use of Child Soldiers, *Briefing to the UN Security Council working group on Sri Lanka*, February 2010, <http://www.child-soldiers.org/document/get?id=1585>.

<sup>19</sup> UN Secretary-General (UNSG), *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, para. 22, <http://www.unhcr.org/refworld/docid/4bfce6a2.html>.



reportedly been released from rehabilitation centres.<sup>20</sup> Some of the adult detainees have also been released after completing rehabilitation programmes or because they were no longer deemed to present a risk, including some persons with physical disabilities.<sup>21</sup> By May 2010, around 9,000 alleged former LTTE cadres reportedly remained in closed camps.<sup>22</sup>

In the immediate post-conflict period, there have been allegations of enforced disappearances of persons suspected of LTTE links.<sup>23</sup> Furthermore, the broad powers of arrest and detention under the Prevention of Terrorism Act (PTA)<sup>24</sup> and the Emergency Regulations,<sup>25</sup> have reportedly generated considerable controversy around issues such as the arrest and detention of persons suspected of LTTE links, in a number of cases allegedly on limited evidence and often for extended periods.<sup>26</sup> Human rights observers have also expressed concerns regarding the broadly defined offences under the Emergency Regulations,<sup>27</sup> which allow, *inter alia*, detention without charge for up to 18 months,<sup>28</sup> and use of informal places of detention.<sup>29</sup> In May 2010, the Government, however, relaxed the Emergency Regulations<sup>30</sup> by withdrawing several provisions, including those dealing with the imposition of curfews, propaganda activities, printing of documents and distributing them in support of terrorism, as well as those restricting processions and meetings considered detrimental to national security.<sup>31</sup>

Amongst issues relevant to the determination of eligibility for refugee protection are allegations by a number of sources regarding: torture of persons suspected of LTTE links in detention;<sup>32</sup> death of

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<sup>20</sup> See BBC News, *Child soldiers released*, 26 May 2010, [http://www.bbc.co.uk/sinhala/news/story/2010/05/100526\\_childsoldiers.shtml](http://www.bbc.co.uk/sinhala/news/story/2010/05/100526_childsoldiers.shtml). It is reported that 183 children, who had been released prior to 18 January 2010, have only received a temporary ID card issued by the Terrorist Investigation Unit; see Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Mission Report: Visit of Major General (ret.) Patrick Cammaert, Special Envoy of the Special Representative for Children & Armed Conflict, to Sri Lanka, 05-11 December 2009*, 20 February 2010, [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/SNAA-83W4HH-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/SNAA-83W4HH-full_report.pdf/$File/full_report.pdf). No information was available at the time of writing regarding particular protection concerns of these released children.

<sup>21</sup> See Government of Sri Lanka, *Ex-LTTE combatants released to their families completing rehabilitation programs*, 20 May 2010, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/MYAI-85N7VG>; and Guardian, *Sri Lanka's Tamils freed – but future bleak for those who backed Tigers*, 5 April 2010, <http://www.guardian.co.uk/world/2010/apr/05/tamils-sri-lanka-freed-tigers>.

<sup>22</sup> See Government of Sri Lanka, *Ex-LTTE combatants released to their families completing rehabilitation programs*, 20 May 2010, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/MYAI-85N7VG>. Of these, 1,350 are reportedly classified as “criminals” and, according to the Government, will be “dealt with according to the law”; see BBC News, *Ex-Tamil Tiger fighters held in limbo*, 18 May 2010, [http://news.bbc.co.uk/2/hi/south\\_asia/10122772.stm](http://news.bbc.co.uk/2/hi/south_asia/10122772.stm).

<sup>23</sup> See Amnesty International, *Amnesty International Report 2010 – Sri Lanka*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a7ffb.html>. It has been reported that pro-Government paramilitary groups have arrested suspected LTTE sympathizers, but not turned them over to the police. Some of those arrested were allegedly tortured and killed; see US Department of State, *2009 Country Reports on Human Rights Practices – Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>.

<sup>24</sup> *Prevention of Terrorism (Temporary Provisions) Act*, No. 48 of 1979, 20 July 1979, <http://www.unhcr.org/refworld/docid/4561dac84.html>.

<sup>25</sup> These include the *Emergency (Miscellaneous Provisions and Powers) Regulation, No. 1 of 2005*, 13 August 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=46a9f2b22>; and the *Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 07 of 2006*, 6 December 2006, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=45af76a62>.

<sup>26</sup> See, for example, *Freedom House, Freedom in the World 2010 – Sri Lanka*, 1 June 2010, <http://www.unhcr.org/refworld/docid/4c1a1e9b25.html>. In September 2009, 36 Tamil prisoners on hunger strike protesting against their prolonged detention without trial at Welikada jail claimed they were beaten by prison guards; see, Amnesty International, *Amnesty International Report 2010 – Sri Lanka*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a7ffb.html>. See also US Department of State, *2009 Country Reports on Human Rights Practices – Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>.

<sup>27</sup> Human Rights Watch, *Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka*, 2 February 2010, <http://www.unhcr.org/refworld/docid/4b6ae4c62.html>.

<sup>28</sup> Regulation 19 of *Emergency (Miscellaneous Provisions and Powers) Regulation, No. 1 of 2005*, 13 August 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=46a9f2b22>. Under the Regulations, the courts have no authority to order the release of a detained person. A “surrenderer”, i.e. a person who surrendered in relation to a counter-insurgency crime, can be detained for up to two years (Regulation 22). Similarly, the PTA allows arrests without warrant, and detention for up to 18 months without the suspect appearing before a court. Detention is initially for 72 hours, and may be extended by administrative order of the Defense Minister for up to 18 months; see Section 9 of the *Prevention of Terrorism (Temporary Provisions) Act*, No. 48 of 1979, 20 July 1979, <http://www.unhcr.org/refworld/docid/4561dac84.html>.

<sup>29</sup> Regulations 19(3), 21, 49 and 69(2) of *Emergency (Miscellaneous Provisions and Powers) Regulation, No. 1 of 2005*, 13 August 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=46a9f2b22>.

<sup>30</sup> *Regulations Amending the Emergency (Miscellaneous Provisions and Powers) Regulation*, No. 1 of 2005, 2 May 2010, <http://www.unhcr.org/refworld/docid/4bf11e222.html>.

<sup>31</sup> Government of Sri Lanka, *Parliament approves Emergency with lesser regulations*, 5 May 2010, [http://www.news.lk/index.php?option=com\\_content&task=view&id=15077&Itemid=44](http://www.news.lk/index.php?option=com_content&task=view&id=15077&Itemid=44). See also Reuters, *Post-war Sri Lanka softens tough emergency laws*, 3 May 2010, <http://www.alertnet.org/thenews/newsdesk/SGE6420CP.htm>.

<sup>32</sup> For example, former detainees of the Terrorist Investigation Division (TID) at Boosa Prison in Galle reported on torture methods used there. These allegedly included beatings, often with cricket bats, iron bars, or rubber hoses filled with sand; electric shock; suspending

LTTE suspects whilst in custody,<sup>33</sup> as well as poor prison conditions, which include severe overcrowding and lack of adequate sanitation, food, water and medical treatment.<sup>34</sup> According to some reports young Tamil men, particularly those originating from the north and east of the country, may be disproportionately affected by the implementation of security and anti-terrorism measures on account of their suspected affiliation with the LTTE.<sup>35</sup>

In light of the foregoing, persons suspected of having links with the LTTE may be at risk on the ground of membership of a particular social group. Claims by persons suspected of having links with the LTTE may, however, give rise to the need to examine possible exclusion from refugee status.<sup>36</sup>

## 2. *Journalists and Other Media Professionals*

Notwithstanding the end of the conflict, restrictions on media independence and freedom are reported to persist, including restricted access to certain regions of the country.<sup>37</sup> Despite a reduction in the number of high-profile attacks on media professionals since June 2009, concerns continue to be voiced in relation to journalists, publishers and other media personnel, who report critically on sensitive matters.<sup>38</sup> A variety of reports indicate that such journalists could be subject to intimidation, harassment, physical attacks, arbitrary detention and disappearances.<sup>39</sup> Politically motivated

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individuals by the wrists or feet in contorted positions, abrading knees across rough cement; burning with metal objects and cigarettes; genital abuse; blows to the ears; asphyxiation with plastic bags containing chili pepper mixed with gasoline; and near-drowning.; see US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>. See also UK Home Office, *Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009*, August 2009, paras. 1.76-1.77, <http://www.unhcr.org/refworld/docid/4ae066de2.html>.

<sup>33</sup> A significant number of detainees, including LTTE suspects, have allegedly died in custody, 26 of whom died in the first six months of 2009 alone; see Freedom House, *Countries at the Crossroads 2010 - Sri Lanka*, 7 April 2010, <http://www.unhcr.org/refworld/docid/4be3c8db0.html>. Recent figures of deaths in custody were not available at the time of writing.

<sup>34</sup> UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak - Addendum*, A/HRC/13/39/Add.6, 26 February 2010, [http://ap.ohchr.org/documents/dpage\\_e.aspx?c=173&su=172](http://ap.ohchr.org/documents/dpage_e.aspx?c=173&su=172). See also US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>.

<sup>35</sup> It is reported that Tamils are frequently harassed at army checkpoints in Colombo. Furthermore, police reportedly refuse to register Tamils originating from the north and the east of the country, a requirement for temporary residence in Colombo, sometimes forcing them to return to their homes; see US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>. According to a Swiss Embassy official, persons arrested during cordon and search operations were mostly young Tamils from Jaffna, Kilinochchi, Mullaitivu, and other places in Vanni, and to some extent Tricomalee. Women with a Vanni national identity card were also reportedly targeted; see UK Home Office, *Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009*, August 2009, <http://www.unhcr.org/refworld/docid/4ae066de2.html>. Based on the available country of origin information, the New Zealand Refugee Status Appeals Authority has recently found that “those most likely to be of interest to authorities at the checkpoints are young Tamil males originating from the north and east of the country, particularly those with: a profile or history of LTTE links; scarring consistent with wounds sustained in hostilities; no identity card or other identity documentation; no Colombo address; an outstanding arrest warrant or criminal record; no employment or other verifiable reason (such as study) for being in Colombo and those without family or other networks in Colombo on which to rely for support”; see *Refugee Appeal No. 76466*, 11 June 2010, para. 77, <http://www.unhcr.org/refworld/docid/4c2dd1b12.html>. See also UK Asylum and Immigration Tribunal country guidance in *TK (Tamils - LP Updated) Sri Lanka CG* [2009] UKAIT 00049, 11 December 2009, <http://www.unhcr.org/refworld/docid/4b2613ca2.html>.

<sup>36</sup> Please refer to Section III (C) of these Guidelines for further guidance relating to exclusion from international refugee protection.

<sup>37</sup> Reporters Without Borders, *World Report 2010 - Sri Lanka*, 9 March 2010, <http://en.rsf.org/report-sri-lanka.79.html>. In June 2009, the Government revived the Press Council Act of 1973, which vests the Press Council, a statutory body, with the power to proscribe the publication of articles relating to, *inter alia*, internal official communications, Cabinet decisions, military matters that could affect national security and economic policy. Under the Act, the Council may impose punitive measures, including extended prison terms and fines; see Sri Lanka Press Council Law, No. 5 of 1973, 30 May 1973, <http://www.unhcr.org/refworld/docid/4be018692.html>. The law was enacted in 1973 during a serious economic crisis and widespread social discontent, and had been rendered inoperative in 2002 through a bipartisan parliamentary resolution; see International Federation of Journalists, *Reactivation of Discredited Press Council Law a Step Backward for Sri Lanka*, 25 June 2009, <http://www.ifj.org/en/articles/reactivation-of-discredited-press-council-law-a-step-backward-for-sri-lanka>.

<sup>38</sup> Such as corruption, human rights abuses, particularly in relation to the conduct of the former armed conflict, or in relation to official policies.

<sup>39</sup> The occurrence of such incidents has been corroborated by credible refugee testimonies. For recent attacks on the media in Sri Lanka, see UN Human Rights Committee, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: Communications to and from Governments*, A/HRC/14/24/Add.1, 18 June 2010, paras. 1027-1038, <http://www.unhcr.org/refworld/docid/4c29a7372.html>; Amnesty International, *Silencing dissent: Media workers under attack in Sri Lanka*, 3 May 2010, <http://www.amnesty.org/en/library/info/ASA37/001/2010/en>; International Federation of Journalists, *Battle for Democracy - Press Freedom in South Asia 2009-2010*, 29 April 2010, <http://www.ifj.org/assets/docs/014/210/1cb020e-39a08d2.pdf>, and CPI, *Getting Away With Murder*, 20 April 2010, <http://cpi.org/reports/2010/04/cpi-2010-impunity-index-getting-away-with-murder.php#more>. In April 2010, journalists covering the eviction of a group of monks demanding the release of General Fonseka from detention were allegedly harassed by the police; see Daily Mirror, *Fasting monks forcibly removed*, 6 April 2010, <http://www.dailymirror.lk/print/index.php/news/front-image/7682-fasting-monks-forcibly-removed.html>. On 22 March 2010, the



abductions are still reported,<sup>40</sup> and are alleged not to be effectively investigated or prosecuted.<sup>41</sup> Credible reports also indicate that several prominent journalists have fled Sri Lanka in the last 18 months.<sup>42</sup>

In light of the foregoing, UNHCR considers that journalists and other media professionals, who express, or are perceived to hold, critical views on sensitive issues, may be at risk on the ground of (imputed) political opinion.

### 3. *Civil Society and Human Rights Activists*

Concerns have been raised about incidents of harassment, death threats, physical attacks and abductions directed against certain members of civil society, including human rights activists.<sup>43</sup> For example, lawyers involved in corruption cases or representing alleged victims of human rights abuses, as well as witnesses appearing in these cases, may be subject to harassment, attacks, death threats and other forms of intimidation.<sup>44</sup> On 2 March 2010, a Sri Lankan news website, LankaNewsWeb,

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offices of MTV, Sirasa and Shakti TV stations were attacked by a mob allegedly made up of loyalists of a deputy minister; see International Federation of Journalists, *News Broadcasters' Offices Attacked in Colombo*, 23 March 2010, <http://asiapacific.ifj.org/en/articles/news-broadcasters-offices-attacked-in-colombo>. Ruwan Weerakoon, a journalist allegedly close to General Fonseka, was arrested by anti-terrorist police on 18 March 2010, but was later released on bail; see Reporters Without Borders, *Opposition journalist released on bail*, 6 May 2010, <http://en.rsf.org/sri-lanka-anti-terrorist-police-arrest-18-03-2010.36782.html>. On 29 January 2010, Chandana Sirimalwatte, the editor of the Sinhala-language opposition weekly Lanka, was arrested and held for 19 days. No charges were brought against him; see Reporters Without Borders, *Crackdown on media continues*, 31 January 2010, <http://en.rsf.org/sri-lanka-crackdown-on-media-continues-31-01-2010.36251.html>. Sirimalwatte's detention was followed by the sealing of the Lanka newspaper's offices; see International Federation of Journalists, *IFJ backs Sri Lankan journalists' protests against suppression*, 8 February 2010, [http://www.ifex.org/sri\\_lanka/2010/02/10/ifj\\_backs\\_protests/](http://www.ifex.org/sri_lanka/2010/02/10/ifj_backs_protests/). Prageeth Eknaligoda, a political reporter for LankaeNews, sympathetic to General Fonseka, has reportedly disappeared on 24 January 2010. By the end of February 2010, he was still missing, despite calls for a serious investigation; see CPJ, *No sign of Sri Lankan journalist Eknaligoda one month on*, 24 February 2010, <http://www.unhcr.org/refworld/docid/4b9658fb23.html>. For other incidents post-June 2009, see also: Asian Human Rights Commission, *Sri Lanka: Journalist complains of death threats and unknown persons pursuing him*, 21 October 2009, <http://www.ahrchk.net/pr/mainfile.php/2009mr/683/>; Amnesty International, *Sri Lanka jails journalist for 20 years for exercising his right to freedom of expression*, 1 September 2009, <http://www.unhcr.org/refworld/docid/4aa0c1511a.html>; Inter Press Service News Agency, *Sri Lanka's Turnaround Could Signal New Beginning*, 11 May 2010, <http://ipsnews.net/news.asp?idnews=51384>. For an overview of the attacks on the press during 2009, see Committee to Protect Journalists, *Attacks on the Press 2009 - Sri Lanka*, 16 February 2010, <http://www.unhcr.org/refworld/docid/4b7bc2dec.html>.

<sup>40</sup> Abductions are also carried out for ransom; see UK Home Office, *Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009*, August 2009, <http://www.unhcr.org/refworld/docid/4ae066de2.html>.

<sup>41</sup> US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>. In the north, including the Jaffna peninsula, and in the east, journalists who are openly critical of the conduct and activities of the Eelam People's Democratic Party (EPDP) and the TMVP may be targeted by these groups; see Reporters Without Borders, *World Report 2010 - Sri Lanka*, 9 March 2010, <http://en.rsf.org/report-sri-lanka.79.html>.

<sup>42</sup> According to recent estimates, there are more than 15 Sri Lankan journalists in exile; see Amnesty International, *Silencing dissent: Media workers under attack in Sri Lanka*, 3 May 2010, <http://www.amnesty.org/en/library/info/ASA37/001/2010/en>; and Committee for the Protection of Journalists, *No sign of Sri Lankan journalist Eknaligoda one month on*, 24 February 2010, <http://www.unhcr.org/refworld/docid/4b9658fb23.html>. In March 2010, however, the Government announced that it was prepared to offer protection to any of the journalists who return from exile; see Committee to Protect Journalists, *Sri Lankan attorney general assures exiled journalists*, 10 March 2010, <http://www.unhcr.org/refworld/docid/4bab6b291f.html>.

<sup>43</sup> For example, on 11 February 2010, Pattani Razeek, the head of the Community Trust Fund, a Sri Lankan NGO, was reportedly abducted; see Amnesty International, *Sri Lanka: Human rights defender missing in Sri Lanka: Pattani Razeek*, 18 February 2010, <http://www.amnesty.org/en/library/asset/ASA37/004/2010/en/62b83d07-4cd9-46ef-af0b-d7624e9f2284/asa370042010en.html>. See also the US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>; and International Bar Association, *IBAHRI condemns death threat to prominent Sri Lankan human rights activist*, 27 August 2009, <http://www.ahrchk.net/pr/mainfile.php/2009mr/667/>, regarding alleged death threats against Paikiasothy Saravanamuttu, the Executive Director of the Colombo-based think tank Centre for Policy Alternatives (CPA), in relation to the possible withdrawal of the Sri Lanka's Generalized System of Preference Plus tariff concession by the European Union. According to subsequent reports, he was detained and questioned by the police at the Bandaranaike International airport in September 2009; see Amnesty International, *Amnesty International Report 2010 - Sri Lanka*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a7ffb.html>.

<sup>44</sup> See, for example, UN Human Rights Council, *Report of the Special Rapporteur on independence of judges and lawyers, Addendum: Communications to and from Governments*, A/HRC/14/26/Add.1, 18 June 2010, <http://www.unhcr.org/refworld/docid/4c29b4bd2.html>; Amnesty International, *Amnesty International Report 2010 - Sri Lanka*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a7ffb.html>; and US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>. It is reported that the police and security forces put severe pressure on petitioners, lawyers, litigants, witnesses and families to drop human rights cases involving torture; see UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak - Addendum*, A/HRC/13/39/Add.6, 26 February 2010, [http://ap.ohchr.org/documents/dpage\\_e.aspx?c=173&su=172](http://ap.ohchr.org/documents/dpage_e.aspx?c=173&su=172). According to reports four lawyers complained that their names were placed on the Ministry of Defense website as lawyers who regularly appear for alleged terrorists. The accompanying passage indicated that their work was "unpatriotic"; see Asian Legal Resource Centre *Sri Lanka: Prevention of impunity requires clear leadership from the government*, 25 February 2009, <http://www.ahrchk.net/statements/mainfile.php/2009statements/1905/>.

published a list allegedly compiled by a Sri Lankan State intelligence unit containing the names of 35 human rights activists and journalists, each reportedly ranked in accordance with their importance to the intelligence service.<sup>45</sup> Human rights observers expressed concerns about the alleged surveillance list.<sup>46</sup>

In light of the foregoing, UNHCR considers that human rights activists and civil society members, who express, or are perceived to hold, critical views on sensitive issues, may be at risk on account of their (imputed) political opinion.

#### 4. Women and Children with Certain Profiles

The intensification of hostilities during the last months of the conflict was accompanied in the north and east of the country by an increase in the level of violence against women.<sup>47</sup> Despite the end of hostilities, there are still reportedly incidents of sexual and gender based violence against women and girls in former conflict areas.<sup>48</sup> Incidents of rape, including at the hands of the military, have been reported in the north, where a large number of female-headed households are among families being resettled.<sup>49</sup> A significant number of women in IDP camps, as well as former LTTE female cadres in detention centres, have allegedly been raped and sexually assaulted, including by security personnel.<sup>50</sup> With the partial breakdown of social structures caused by the protracted conflict, incidents of domestic violence affecting both women and children are reportedly particularly high in former conflict areas, including in IDP camps.<sup>51</sup> Existing legal provisions prohibiting rape, domestic violence and other forms of violence against women<sup>52</sup> are reportedly not effectively enforced, in part due to lack of awareness and widespread underreporting, but also as a result of the low priority given to these cases by the police and judiciary.<sup>53</sup>

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<sup>45</sup> LankaNewsWeb, *State intelligence units list journalists supportive of the opposition and NGOs Saravanamuttu and Weliamuna top in the list!*, 2 March 2010, [http://www.lankanewsweb.com/news/EN\\_2010\\_03\\_02\\_012.html](http://www.lankanewsweb.com/news/EN_2010_03_02_012.html).

<sup>46</sup> See, for example, Human Rights Watch, *Sri Lanka: End Witch Hunt Against the Media and NGOs*, 10 March 2010, <http://www.hrw.org/en/news/2010/03/10/sri-lanka-end-witch-hunt-against-media-and-ngos>; Amnesty International, *Sri Lanka: Sri Lankan activists threatened*, 10 March 2010, <http://www.amnesty.org/en/library/info/ASA37/005/2010/en>; and International Federation of Journalists, *Executive Director of Transparency International Sri Lanka faces imminent arrest*, 9 March 2010, [http://www.ifex.org/sri\\_lanka/2010/03/15/weliamuna\\_threatened/](http://www.ifex.org/sri_lanka/2010/03/15/weliamuna_threatened/).

<sup>47</sup> See, for example, Freedom House, *Countries at the Crossroads 2010 - Sri Lanka*, 7 April 2010, <http://www.unhcr.org/refworld/docid/4be3c8db0.html>; US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>; and International Crisis Group, *Sri Lanka's Return to War: Limiting the Damage*, 20 February 2008, pp. 9-10, <http://www.unhcr.org/refworld/docid/47bc2e5c2.html>. Statistics on reporting, investigation and prosecution of cases of violence against women are unavailable.

<sup>48</sup> See, for example, TamilNet, *Jaffna peninsula people gripped in shock, fear as abductions escalate*, 12 May 2010, <http://www.tamilnet.com/art.html?catid=13&artid=31739>; US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>; and Sri Lanka Guardian, *Army officers raping a nine year old girl; Can the new army commander maintain army discipline?*, 23 February 2010, <http://www.srilankaguardian.org/2010/02/army-officers-rape-nine-year-old-girl.html>.

<sup>49</sup> For example, two returnee women were reportedly raped by members of the SLA in June 2010, in the Killinochchi/Kandavali area. Four of the six soldiers who were brought before an identification parade were ordered to be remanded until 28 June 2010 by a Killinochchi magistrate; see Sunday Times, *Four soldiers identified in rape case*, 15 June 2010, <http://sundaytimes.lk/cms/articleXYZ10000010.php?id=5967>. See also International Crisis Group, *Sri Lanka: A Bitter Peace*, 11 January 2010, <http://www.unhcr.org/refworld/docid/4b4c32c12.html>.

<sup>50</sup> According to some reports, women have been taken away from camps with the assistance of the police and military prior to being assaulted. The women involved are reportedly too afraid to report the crimes; see International Crisis Group, *Sri Lanka: A Bitter Peace*, 11 January 2010, p. 5, <http://www.unhcr.org/refworld/docid/4b4c32c12.html>. The high incidence of sexual and gender based violence in IDP camps has been corroborated by credible refugee testimonies.

<sup>51</sup> Internal Displacement Monitoring Centre, *Sri Lanka: Support needed in camps while returns continue*, 7 May 2010, [http://www.internal-displacement.org/8025708F004D31AA/\(httpIDPNewsAlerts\)/6EDCF3E26BA1E7F0C125771C0043DF42](http://www.internal-displacement.org/8025708F004D31AA/(httpIDPNewsAlerts)/6EDCF3E26BA1E7F0C125771C0043DF42). See also UK Home Office, *Country of Origin Information Report - Sri Lanka*, 18 February 2010, <http://www.unhcr.org/refworld/docid/4b8db0c2.html>.

<sup>52</sup> Rape, sexual harassment and other forms of violence against women constitute criminal offences incurring severe punishments under the Penal Code of Sri Lanka. Marital rape is, however, not considered an offense save in cases of spouses living under judicial separation. The Government adopted legislation to prevent domestic violence in October 2005. See *Prevention of Domestic Violence Act*, No. 34 of 2005, 3 October 2005, <http://www.unhcr.org/refworld/docid/4c03ba2f2.html>. Pursuant to the Act, a person who fears domestic violence can seek a Preventive Order – issued for a period of up to 12 months by a magistrate – which bars the ‘aggressor’ from committing acts of domestic violence and entering the victim’s residence among other prohibitions.

<sup>53</sup> US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>. See also Statement by H.E. Dr. Palitha T. B. Kohona, Ambassador, Permanent Representative of Sri Lanka to the United Nations, 54th Session of the Commission on the Status of Women, 5 March 2010, [http://www.un.org/womenwatch/daw/beijing15/general\\_discussion/SRI%20LANKA.pdf](http://www.un.org/womenwatch/daw/beijing15/general_discussion/SRI%20LANKA.pdf); Daily News, *Laws exist, people unaware*, 9

There are some reports that women are trafficked internally and internationally for domestic servitude<sup>54</sup> and sexual exploitation.<sup>55</sup> Efforts are made by the authorities to investigate trafficking incidents. However, no convictions for trafficking and trafficking-related offences have been reported.<sup>56</sup> Children are also reportedly trafficked internally for sexual exploitation and, less frequently, for forced labour.<sup>57</sup>

As a positive development, all but two children out of 596 child soldiers associated with Tamil Makkal Viduthalai Pulikal (TMVP) and documented by UNICEF since 2006 have been released by the TMVP following the signing of an Action Plan in December 2008. Recruitment and re-recruitment of children is, however, reported in Ampara district in the Eastern Province by “commander” Iniya Barrathi who was part of the TMVP breakaway faction under Karuna’s leadership.<sup>58</sup> It has also been reported that the Eelam People’s Democratic Party (EPDP) and the People’s Liberation Organization of Tamil Eelam (PLOTE) are continuing to recruit and use children for task-specific purposes, such as guarding offices.<sup>59</sup> To date, no investigations or prosecution of cases of recruitment of children, an offence under the Penal Code, have been undertaken.<sup>60</sup>

In light of the above, UNHCR considers that women and children with the specific profiles outlined above, as well as child soldiers, may be at risk on the ground of membership of a particular social group depending on the circumstances of the individual case.<sup>61</sup> Asylum claims made by children, including any examination of exclusion considerations for former child soldiers, need to be assessed carefully and in accordance with the UNHCR Guidance on child asylum claims.<sup>62</sup>

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March 2009, <http://www.dailynews.lk/2009/03/09/news20.asp>; and Inter Press Service, *Women Battered Despite Domestic Violence Law*, 11 October 2007, <http://ipsnews.net/news.asp?idnews=39605>.

<sup>54</sup> US Department of State, *Trafficking in Persons Report 2010 - Sri Lanka*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1883c52d.html>.

<sup>55</sup> Since 2006, all forms of trafficking are prohibited and punishable by up to 20 years’ imprisonment; see Section 360C of the Penal Code, Chapter 19, 1 January 1885, <http://www.unhcr.org/refworld/docid/4c03e2af2.html>.

<sup>56</sup> See US Department of State, *Trafficking in Persons Interim Assessment - Sri Lanka*, 24 February 2010, <http://www.unhcr.org/refworld/docid/4b8e7a6b23.html>.

<sup>57</sup> See US Department of State, *Trafficking in Persons Report 2010 - Sri Lanka*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1883c52d.html>; and US Department of Labor, *2008 Findings on the Worst Forms of Child Labor - Sri Lanka*, 10 September 2009, <http://www.unhcr.org/refworld/docid/4aba3ec037.html>. It should be noted that Section 358A of the Penal Code criminalizes, *inter alia*, debt bondage, serfdom, forced or compulsory labour, and slavery; such crimes are liable of a fine and imprisonment for up to 30 years, whilst all forms of trafficking are prohibited under Section 360. One prosecution under Section 360(C) (trafficking) has been reported during 2009.

<sup>58</sup> TMVP members and cadres loyal to Karuna have also been accused of child recruitment in Batticaloa district; see Amnesty International, *Amnesty International Report 2010 - Sri Lanka*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a7ffb.html>. See also Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Mission Report: Visit of Major General (ret.) Patrick Cammaert, Special Envoy of the Special Representative for Children & Armed Conflict, to Sri Lanka, 05-11 December 2009*, 20 February 2010, [http://www.reliefweb.int/rw/RWFFiles2010.nsf/FilesByRWDocUnidFilename/SNAA-83W4HH-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFFiles2010.nsf/FilesByRWDocUnidFilename/SNAA-83W4HH-full_report.pdf/$File/full_report.pdf).

<sup>59</sup> Coalition to Stop the Use of Child Soldiers, *Sri Lanka: Report to the Committee on the Rights of the Child on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, April 2010, p. 8, [http://www.child-soldiers.org/Coalition\\_report\\_to\\_CRC\\_on\\_OPAC\\_implementation\\_in\\_Sri\\_Lanka\\_-\\_April\\_2010.pdf](http://www.child-soldiers.org/Coalition_report_to_CRC_on_OPAC_implementation_in_Sri_Lanka_-_April_2010.pdf).

<sup>60</sup> Coalition to Stop the Use of Child Soldiers, *Briefing to the UN Security Council working group on Sri Lanka*, February 2010, <http://www.child-soldiers.org/document/get?id=1585>. Since 2006, recruitment of children for use in armed conflict is prohibited under Section 358A of the Penal Code of Sri Lanka, Ordinance No. 2 of 1883, as last amended by Ordinance No. 16 of 2006, 1 January 1885, [http://www.idpsrilanka.lk/html/Children/Domestic/1883 No 2 Penal code.pdf](http://www.idpsrilanka.lk/html/Children/Domestic/1883%20No%20Penal%20code.pdf).

<sup>61</sup> Rape and other forms of sexual and gender based violence, such as domestic violence and trafficking, may amount to persecution, particularly where the State is unwilling or unable to provide effective protection. For further guidance see UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002, <http://www.unhcr.org/refworld/docid/3d36f1c64.html>; and UNHCR, *Guidelines on International Protection No. 2: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.unhcr.org/refworld/docid/3d36f23f4.html>. According to the Committee against Torture, the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of gender-based violence, such as rape, domestic violence and trafficking, facilitates and enables non-State actors to commit such acts with impunity, the State’s indifference or inaction provides a form of encouragement and/or *de facto* permission; see UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, CAT/C/GC/2, 24 January 2008, <http://www.unhcr.org/refworld/docid/47ac78ce2.html>. For further guidance on trafficked women or women at risk of being (re)trafficked, also refer to UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, HCR/GIP/06/07, 7 April 2006, <http://www.unhcr.org/refworld/docid/443679fa4.html>.

<sup>62</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.



## 5. *Lesbian, Gay, Bisexual and Transgender (LGBT) Individuals*

“Homosexual conduct” is criminalized in Sri Lanka and punishable by fines and imprisonment for a maximum of 10 years for acts between adults, and ranging from 10 to 20 years for acts involving a minor below the age of 16.<sup>63</sup> Although the relevant Penal Code provisions are not officially enforced, it has been reported that LGBT individuals may face harassment, extortion for money, demands for sexual favours and physical violence in Colombo and other areas.<sup>64</sup> Societal stigma and discrimination against LGBT individuals is reportedly significant.<sup>65</sup> NGOs working on LGBT issues do not always register with the Government,<sup>66</sup> and it is reported that their offices and staff are sometimes targeted for reprisals.<sup>67</sup>

In light of the reported discrimination and acts of violence against LGBT individuals, as well as the criminalization of “homosexual conduct”, UNHCR considers that LGBT individuals may be at risk on account of their membership of a particular social group, i.e. their sexual orientation and/or gender identity, since they do not, or are perceived not to conform to prevailing legal, religious and social norms.<sup>68</sup> Furthermore, the existence of significant criminal sanctions for “homosexual conduct” is likely to impede access to State protection, particularly where persecutory acts are perpetrated by non-State actors such as family or community members.<sup>69</sup>

### B. Internal Flight or Relocation Alternative

A detailed analytical framework for assessing the availability of an internal flight or relocation alternative (IFA/IRA) is contained in the UNHCR *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*.<sup>70</sup>

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<sup>63</sup> Articles 365 and 365A of the Penal Code of Sri Lanka, Ordinance No. 2 of 1883, as last amended by Ordinance No. 16 of 2006, 1 January 1885, [http://www.idpsrilanka.lk/html/Children/Domestic/1883 No 2 Penal code.pdf](http://www.idpsrilanka.lk/html/Children/Domestic/1883%20No%20Penal%20code.pdf). Article 365A, which was introduced by the Penal Code (Amendment) Act (No. 22 of 1995), [http://www.commonlii.org/lk/legis/num\\_act/pca22o1995213/](http://www.commonlii.org/lk/legis/num_act/pca22o1995213/), prohibits acts of “gross indecency” and was interpreted to encompass sexual acts between women; see Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism*, December 2008, <http://www.unhcr.org/refworld/docid/494b5e4c2.html>.

<sup>64</sup> US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>.

<sup>65</sup> LGBT individuals experience violence at the hands of family members. Other treatment range from family expulsion, forced home confinement and denial of any communication with non-family members; see International Gay and Lesbian Human Rights Commission, *Violence On the Basis of Sexual Orientation, Gender Identity and Gender Expression Against Non-Heteronormative Women in Asia (Sri Lanka excerpt)*, 26 February 2010, <http://ihrc.digitopia.net/binary-data/ATTACHMENT/file/000/000/386-1.pdf>. See also Women’s Support Group, <http://www.wsglanka.com/>; Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism*, December 2008, <http://www.unhcr.org/refworld/docid/494b5e4c2.html>; and Immigration and Refugee Board of Canada, *Sri Lanka: Laws proscribing homosexual acts and whether they are applied in practice; the treatment of homosexuals by authorities, by society at large and by the Muslim community*, 17 January 2008, <http://www.unhcr.org/refworld/docid/47ce6d7d2d.html>.

<sup>66</sup> US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>.

<sup>67</sup> The leader of a LGBT support group has reportedly fled the country after receiving death threats; see Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism*, December 2008, <http://www.unhcr.org/refworld/docid/494b5e4c2.html>. See also GayTimes, *Sri Lanka*, 27 February 2007, <http://www.gaytimes.co.uk/gt/listings.asp?CID=884&action=ShowCountry>.

<sup>68</sup> For further guidance see UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, <http://www.unhcr.org/refworld/docid/48abd5660.html>; and UNHCR, *Guidelines on International Protection No. 2: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.unhcr.org/refworld/docid/3d36f23f4.html>.

<sup>69</sup> Crimes against LGBT individuals are allegedly often unreported; see US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>; and International Gay and Lesbian Human Rights Commission, *Violence On the Basis of Sexual Orientation, Gender Identity and Gender Expression Against Non-Heteronormative Women in Asia (Sri Lanka excerpt)*, 26 February 2010, <http://ihrc.digitopia.net/binary-data/ATTACHMENT/file/000/000/386-1.pdf>. Even in the absence of enforcement of the legal provisions criminalizing “homosexual conduct”, the pervading or generalized climate of homophobia, as evidenced by harassment and incidents of violence against LGBT individuals, societal attitudes, etc., may be sufficient indication of the risks faced by LGBT individuals in Sri Lanka. See UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, paras. 21-22, <http://www.unhcr.org/refworld/docid/48abd5660.html>.

<sup>70</sup> UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.unhcr.org/refworld/docid/3f2791a44.html>.

The assessment of the availability of an IFA/IRA requires two main sets of analysis, namely its (i) **relevance** and its (ii) **reasonableness**. In cases where a well-founded fear of persecution has been established in some localized part of the country of origin, the determination of whether the proposed internal flight or relocation area is an appropriate alternative for the individual concerned requires an assessment over time, taking into account not only the circumstances that gave rise to the risk feared, and that prompted flight from the area of origin, but also whether the proposed area provides a safe and meaningful alternative in the future. The personal circumstances of the individual applicant and the conditions in the area of relocation need to be considered.<sup>71</sup>

When assessing the reasonableness of an IFA/IRA in the north and east of Sri Lanka, the following elements need to be taken into account: the lack of basic infrastructure and inadequacy of essential services, such as water, sanitation, health care and education;<sup>72</sup> the presence of landmines and unexploded ordnance;<sup>73</sup> as well as continued economic and security restrictions, such as the presence of Special Economic Zones and High Security Zones (HSZ),<sup>74</sup> which prevent civilians from accessing locations used for agriculture, fishing and cattle grazing and other livelihood activities.<sup>75</sup>

In the case of a prospective IFA/IRA in Colombo, it should be borne in mind that young Tamil men originating from the north and east of the country could encounter closer scrutiny during the police registration process<sup>76</sup> and may, in some cases, be denied a residence permit.<sup>77</sup>

### C. Exclusion from International Refugee Protection

In light of Sri Lanka's 26-year internal armed conflict, and a record of serious human rights violations and transgressions of international humanitarian law, exclusion considerations under Article 1F of the 1951 Convention may arise in individual asylum claims by Sri Lankan asylum-seekers. Exclusion considerations may be triggered if there are elements in the applicant's claim that suggest that he or she may have been associated with or involved in the commission of criminal acts that fall within the

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<sup>71</sup> UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, paras. 7-8, <http://www.unhcr.org/refworld/docid/3f2791a44.html>.

<sup>72</sup> Much of the basic infrastructure was destroyed during the conflict and essential services are yet to be fully restored; see Asian Development Bank, *Rapid Reconstruction, Inclusive Growth, Key to Sri Lanka's Post-War Development - ADB President*, 28 May 2010, <http://www.adb.org/Media/Articles/2010/13248-sri-lankan-reconstructions/>. See also, UNHCR, *Q&A: Northern Sri Lanka emerges from conflict but challenges remain*, 7 April 2010, <http://www.unhcr.org/4bbc9b9b9.html>.

<sup>73</sup> Ten districts located in the north and east of Sri Lanka were contaminated with landmines and unexploded ordnance (UXO), i.e. Ampara, Anuradhapura, Batticaloa, Jaffna, Kilinochchi, Mannar, Mullaitivu, Polonnaruwa, Trincomalee, and Vavuniya; see UN Office for the Coordination of Humanitarian Affairs, *Humanitarian Portal – Sri Lanka*, accessed on 28 May 2010, [http://www.humanitarianinfo.org/srilanka\\_hpsl/Mine\\_Action.aspx#reports](http://www.humanitarianinfo.org/srilanka_hpsl/Mine_Action.aspx#reports). According to the UNDP mine action database, as of 1 May 2010, approximately 482 square km of the Vanni remain contaminated by landmines and other UXO. Estimates suggest that it could take as long as 20 years to clear all known contaminated areas; see IRIN, *Sri Lanka: De-mining efforts face funding shortfall*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c04c1931d.html>. According to the Government, circa 1,000 army de-mining troops have already cleared approximately 200 square km in the Jaffna, Killinochchi, Mullaitivu and Mannar districts. The de-mining process has been completed in most parts of the Killinochchi district; see Lankapuvath, *Army expedites de-mining process in North*, 2 March 2010, [http://www.lankapuvath.lk/index.php?option=com\\_content&view=article&catid=48%3Asecurity&id=6094%3AArmy-expedites-de-mining-process-in-north&Itemid=72](http://www.lankapuvath.lk/index.php?option=com_content&view=article&catid=48%3Asecurity&id=6094%3AArmy-expedites-de-mining-process-in-north&Itemid=72).

<sup>74</sup> The official HSZ have been legally established and are officially acknowledged, whereas the unofficial HSZ do not have a legal basis, nor are they officially acknowledged to exist. At the time of writing, there was no indication as to whether and when the HSZ will be dismantled; see Centre for Policy Alternatives, *Land in the Eastern Province: Politics, Policy and Conflict*, 13 May 2010, [http://www.cpalanka.org/file/download.php?fileName=attach/722/Land\\_in\\_the\\_Eastern\\_Province- Politics, Policy and Conflict.pdf](http://www.cpalanka.org/file/download.php?fileName=attach/722/Land_in_the_Eastern_Province- Politics, Policy and Conflict.pdf). Following the parliamentary elections in April 2010, the local Government in Jaffna has promised to gradually remove the HSZs; see AsiaNews, *Government promises to remove the High Security Zone. Hopes for Tamil refugees*, 13 April 2010, <http://www.asianews.it/news-en/Government-promises-to-remove-the-High-Security-Zone.-Hopes-for-Tamil-refugees-18130.html>. In the northern Jaffna Peninsula alone, 15 HSZ have reportedly been established since the 1990s, covering 160 square kilometers, i.e. 18 percent of the peninsula's land mass; see Sujeewa Amaranath, *Sri Lanka: Permanent military occupation of the North and East*, 23 March 2010, <http://www.wsws.org/articles/2010/mar2010/sril-m23.shtml>.

<sup>75</sup> In the months following the end of the conflict some of the restrictions affecting livelihood have, however, been eased. For example, the Government eased the fishing ban on the east coast and even removed the night ban on fishing in most areas; see Daily Mirror, *Fishing restrictions lifted in the East*, 15 June 2009, [http://archives.dailymirror.lk/DM\\_BLOG/Sections/fmNewsDetailView.aspx?ARTID=51816](http://archives.dailymirror.lk/DM_BLOG/Sections/fmNewsDetailView.aspx?ARTID=51816).

<sup>76</sup> It is reported that persons who want to move to Colombo must register with the local police. Registration usually requires a national identification card or passport and information on the planned length and purpose of stay. UK Home Office, *Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009*, August 2009, <http://www.unhcr.org/refworld/docid/4ae066de2.html>.

<sup>77</sup> US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>.

scope of Article 1F. Given the potential serious consequences of exclusion from international refugee protection, exclusion clauses need to be applied on the basis of a full assessment of the circumstances of the individual case.<sup>78</sup>

In the context of Sri Lanka, exclusion considerations may be raised in the cases of asylum-seekers with certain backgrounds and profiles, in particular those who have participated in the armed conflict. Careful consideration needs to be given in particular to the following profiles: (i) former members of the LTTE;<sup>79</sup> (ii) current and former members of the Sri Lankan Army (SLA)<sup>80</sup> and other security forces, including the Special Task Force;<sup>81</sup> (iii) members of the TMVP, including the Karuna faction;<sup>82</sup> (iv) members of the EPDP;<sup>83</sup> and (v) members of the PLOTE, as well as other militias and paramilitary groups.<sup>84</sup>

Potential exclusion due to involvement in the commission of war crimes, pursuant to Article 1F(a), is of particular relevance in the context of Sri Lanka.<sup>85</sup> Acts reportedly committed by the parties to the

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<sup>78</sup> Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention can be found in UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, <http://www.unhcr.org/refworld/docid/3f5857684.html>; and UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.unhcr.org/refworld/docid/3f5857d24.html>.

<sup>79</sup> Given the distinct but substantial role that women played within the LTTE, issues of exclusion should be addressed with regard to both men and women affiliated with the LTTE activities. Amongst the crimes allegedly committed by the LTTE were the killing, wounding and otherwise endangering civilians, including by preventing them from leaving the conflict zone in order to use them as “human shielding” against SLA attacks, engaging in torture, arbitrary arrest and detention, and forced recruitment, including recruitment of child soldiers; see, for example, International Crisis Group, *War Crimes in Sri Lanka*, 17 May 2010, <http://www.unhcr.org/refworld/docid/4bf13c072.html>; US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>; and Coalition to Stop the Use of Child Soldiers, *Sri Lanka - Issues Concerning Protection of Children Post Armed Conflict*, July 2009, <http://www.unhcr.org/refworld/docid/4a77f93e2.html>. It is also reported that the LTTE deliberately targeted civilians and carried out indiscriminate attacks outside the conflict zone, including suicide bombings and an aerial assault on Colombo; see, for example, Amnesty International, *Amnesty International Report 2010 - Sri Lanka*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a7ffb.html>.

<sup>80</sup> For more information, see, for example, International Crisis Group, *War Crimes in Sri Lanka*, 17 May 2010, <http://www.unhcr.org/refworld/docid/4bf13c072.html>; Human Rights Watch, *Sri Lanka: Repeated Shelling of Hospitals Evidence of War Crimes*, 8 May 2009, <http://www.unhcr.org/refworld/docid/4a07ccfb7.html>; and Human Rights Watch, *War on the Displaced. Sri Lankan Army and LTTE Abuses against Civilians in the Vanni*, 19 February 2009, <http://www.unhcr.org/refworld/docid/499e71c32.html>. As far as enforced disappearances, abductions and extrajudicial/summary executions are concerned, see, for example, Human Rights Watch, *Sri Lanka: New Evidence of Wartime Abuses*, 20 May 2010, <http://www.unhcr.org/refworld/docid/4bf787ac.html>; Human Rights Watch, *Uncovering Sri Lanka's war crimes*, 22 January 2010, <http://www.unhcr.org/refworld/docid/4b5daf841e.html>; Human Rights Watch, *Recurring Nightmare: State Responsibility for “Disappearances” and Abductions in Sri Lanka*, 6 March 2008, <http://www.unhcr.org/refworld/docid/47d0fab62.html>; and International Crisis Group, *Sri Lanka's Return to War: Limiting the Damage*, 20 February 2008, <http://www.unhcr.org/refworld/docid/47bc2e5c2.html>.

<sup>81</sup> For more information, see Coalition to Stop the Use of Child Soldiers, *Sri Lanka - Issues Concerning Protection of Children Post Armed Conflict*, July 2009, p. 8, <http://www.unhcr.org/refworld/docid/4a77f93e2.html>.

<sup>82</sup> The TMVP, formerly led by Vinayagamoorthy Muralitharan (also known as Karuna), has been reconstituted and is now under the control of former LTTE cadre Sivanesathurai Chandrakanthan (also known as Pillayan). Accusations of TMVP involvement in abductions, child recruitment, robberies and repression of dissent are widely documented; see, for example, US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bbc.html>; Suda Ramachandran, *Sri Lanka's end game brings new woes*, Asia Times, 7 February 2009, [http://www.atimes.com/atimes/South\\_Asia/KB07Df02.html](http://www.atimes.com/atimes/South_Asia/KB07Df02.html); Human Rights Watch, *Sri Lanka Human Rights Situation deteriorating in the East*, 24 November 2008, <http://www.unhcr.org/refworld/docid/492fedaf6.html>; see also International Crisis Group, *Sri Lanka's Return to War: Limiting the Damage*, 20 February 2008, <http://www.unhcr.org/refworld/docid/47bc2e5c2.html>.

<sup>83</sup> The EPDP has been accused, alongside the TMPV, of having carried out assassinations and kidnappings of Tamils and political opponents, particularly in the last five years; see for example, Freedom House, *Countries at the Crossroads 2010 - Sri Lanka*, 7 April 2010, <http://www.unhcr.org/refworld/docid/4be3c8db0.html>; and Free Media Movement, *Independent media in Jaffna threatened by armed cadre of EPDP*, 29 October 2008, <http://freemediaisri Lanka.wordpress.com/2008/10/29/independent-media-in-jaffna-threatened-by-armed-cadre-of-epdp/>. Unverified reports also link the EPDP to post-conflict forced recruitment of children from detention camps; see Coalition to Stop the Use of Child Soldiers, *Sri Lanka - Issues Concerning Protection of Children Post Armed Conflict*, July 2009, <http://www.unhcr.org/refworld/docid/4a77f93e2.html>.

<sup>84</sup> A political party with many cadres working as paramilitaries, the PLOTE has reportedly been implicated in a high number of abductions, disappearances, killings, extortions and forced recruitments in Sri Lanka; see, for example, UN Security Council, *Report of the Secretary-General on children and armed conflict in Sri Lanka*, S/2009/325, 25 June 2009, <http://www.unhcr.org/refworld/docid/4a5316c22.html>; Human Rights Watch, *Universal Periodic Review of Sri Lanka – Submission to the Human Rights Council*, 4 May 2008, <http://www.hrw.org/en/news/2008/05/04/universal-periodic-review-sri-lanka>; and Amnesty International, *Sri Lanka: Government must investigate paramilitary group violations*, 4 July 2001, <http://www.amnesty.org/en/library/info/ASA37/010/2001>.

<sup>85</sup> War crimes are serious violations of international humanitarian law (IHL) committed during an armed conflict. Criminal liability for violations of international humanitarian law applicable during non-international armed conflicts, i.e. Common Article 3 of the 1949 Geneva Conventions, Additional Protocol II and customary international law, was however not established until the mid-1990s. In



armed conflict in Sri Lanka include, *inter alia*, abductions and disappearances, indiscriminate attacks on civilians, use of human shields, restrictions on freedom of movement, forced displacement, torture and other cruel, inhuman and degrading treatment, including rape, execution of prisoners of war, extrajudicial executions and forced recruitment for military service and/or labour, including recruitment of children.<sup>86</sup>

The LTTE and TMVP, as well as other armed groups in Sri Lanka were also reportedly engaged in various criminal activities, such as extortion, illegal taxation, prostitution, and smuggling of humans, arms and other contraband. If these crimes are linked to the armed conflict in Sri Lanka after the mid-1990s and involved violence, coercion or intimidation of civilians, they may constitute war crimes under applicable international humanitarian law. Where such acts do not amount to war crimes, it needs to be determined whether they constitute serious non-political crimes under Article 1F(b) of the 1951 Convention.

For exclusion to be justified, individual responsibility must be established in relation to a crime within the scope of Article 1F. Such responsibility flows from a person having committed or participated in the commission of a criminal act, or on the basis of command/superior responsibility for persons in positions of authority. Applicable defenses, if any, as well as considerations related to proportionality, apply. As such, LTTE membership is not a sufficient basis in itself to exclude an individual from refugee status, particularly in light of the well documented practices of forced recruitment, particularly of children. It is necessary to consider whether the individual concerned was personally involved in acts of violence or other excludable acts, or knowingly contributed in a substantial manner to such acts. A credible explanation regarding the individual's non-involvement with or disassociation from any excludable acts, should absent reliable evidence to the contrary, remove the individual from the application scope of the exclusion clauses.

Regular contributions of large sums of money, with the knowledge that those funds will be used to commit serious crimes, may also be an independent basis for exclusion.<sup>87</sup>

The LTTE has been designated by certain countries and regional groupings as a "terrorist organization." Individual responsibility for excludable acts in relation to persons affiliated or associated with "terrorist organizations or groups" may exceptionally be presumed if: (i) membership is voluntary, and (ii) when the members of such groups can be reliably and reasonably considered to be heavily and individually involved in acts giving rise to exclusion.<sup>88</sup> In light of the well-documented LTTE forcible conscription practices and the wide range of activities which civilians are known to have provided to the LTTE in areas under former LTTE control, UNHCR does not consider it appropriate to presume that all (former) LTTE cadres have been heavily and individually involved in

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1995, the International Criminal Tribunal for the former Yugoslavia (ICTY) decided that violations of international humanitarian law applicable to non-international armed conflicts could be criminal under customary international law; see *Prosecutor v. Dusko Tadic aka "Dule", Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1, 2 October 1995, para. 134, <http://www.unhcr.org/refworld/docid/47fd520.html>. Hence, only those violations of IHL that occurred after 1995 would be considered "war crimes" within the scope of Article 1F(a). Violations of IHL committed by the parties to the Sri Lankan armed conflict before this time would need to be assessed under other provisions of Article 1F, most notably as serious non-political crimes under Article 1F(b) or crimes against humanity under Article 1F(a).

<sup>86</sup> The conscription, enlistment and use of children in hostilities have been frequent practices by both the LTTE and the TMVP. Article 8(2)(e)(vii) of the Statute of the International Criminal Court established as a war crime the conscription, enlistment or active use of children under the age of 15 in hostilities. Since armed groups such as the LTTE and TMVP have no legal basis on which to conscript anyone into military service, the forcible recruitment of any person would constitute inhumane treatment of civilians under the Common Article 3 to the four Geneva Conventions of 1949 and Article 4 of Additional Protocol II (requiring humane treatment of persons taking no active part in hostilities). Enlisting volunteers between 15 and 18 is, however, not a war crime (Article 8(2)(e)(vii) of the Statute of the International Criminal Court).

<sup>87</sup> UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, para. 81, <http://www.unhcr.org/refworld/docid/3f5857d24.html>. See also UNHCR's intervention in a case before the UK Supreme Court in *JS (Sri Lanka) v. Secretary of State for Home Department - UNHCR letter to the parties*, 8 December 2009, <http://www.unhcr.org/refworld/docid/4b6a94c92.html>.

<sup>88</sup> See UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, paras. 62, 106 and 109, <http://www.unhcr.org/refworld/docid/3f5857d24.html>. See also, UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, paras. 19 and 26, <http://www.unhcr.org/refworld/docid/3f5857684.html>; UNHCR, *Statement on Article 1F of the 1951 Convention*, July 2009, pp. 30-32, <http://www.unhcr.org/refworld/docid/4a5de2992.html>.

acts giving rise to exclusion.<sup>89</sup> However, given the nature and frequency of violent crimes committed by the LTTE, a presumption of individual responsibility may be applied with regard to those having held senior positions of authority in the organization.<sup>90</sup>

#### **IV. Conclusion**

At the time of writing, the greatly improved situation in Sri Lanka is still evolving. UNHCR recommends that all claims by asylum-seekers from Sri Lanka need to be considered on the basis of their individual merits in fair and efficient refugee status determination procedures taking into account up-to-date and relevant country of origin information. Particular attention is drawn to the profiles outlined in these Guidelines.

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<sup>89</sup> See also the UK Supreme Court judgment in *R (on the application of JS) (Sri Lanka) v. Secretary of State for the Home Department* [2010] UKSC 15, 17 March 2010, <http://www.unhcr.org/refworld/docid/4ba0d8fd2.html>.

<sup>90</sup> These include, but are not limited to, persons in a position of command, whether or not they had a formal rank; persons directing military activities; and persons carrying out training or recruitment, including forced recruitment.