Home Office

Country Policy and Information Note

Sri Lanka: Tamil separatism

Version 4.0

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Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as 'clearly unfounded' under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country information

The COI within this note has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), dated April 2008, and the European Asylum Support Office's research guidelines, Country of Origin Information report methodology, dated July 2012.

Feedback

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

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Information about the IAGCI's work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's website at http://icinspector.independent.gov.uk/country-information-reviews/

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Policy guidance

Updated: 28 March 2017

1. Introduction

1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by the Sri Lankan authorities due to the person's actual or perceived political opinion based on support for or involvement with Tamil separatist groups.

1.2 Points to note

1.2.1 The focus of this note is on the Liberation Tigers of Tamil Eelam (LTTE). However, the guidance applies equally to involvement with other groups who advocate Tamil separatism.

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2. Consideration of Issues

2.1 Credibility

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

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

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

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2.2 Document verification

2.2.1 Decision makers should note that staff at the British High Commission in Colombo are in a position to respond to requests from UK asylum decision makers to verify the authenticity of official documents.

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2.3 Exclusion

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

2.3.2 If there are serious reasons for considering that the person belongs to, or professes to belong to, or invites support for, the LTTE, then the decision maker must consider whether one of the exclusion clauses is applicable.

2.3.3 For further guidance on the exclusion clauses, discretionary leave and restricted leave, see the Asylum Instruction on Exclusion: Article 1F of the Refugee Convention, the Asylum Instruction on Discretionary Leave and the Asylum Instruction on Restricted Leave.

2.4 Assessment of risk

a. General points

2.4.1 In the country guidance case of GJ & Others (post –civil war: returnees Sri Lanka CG [2013] UKUT 00319 (IAC) (5 July 2013) (heard on 5 - 8 and 11-12 February 2013, 15 March 2013 and 19 April 2013), the Upper Tribunal found amongst other things that not all Tamils are at risk on return to Sri Lanka (paragraph 337). The findings in GJ & Others were upheld by the Court of Appeal in the case of MP (Sri Lanka) & Anor (18 June 2014).

2.4.2 The Upper Tribunal in GJ & Others found that:

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

2.4.3 Since the country guidance case of GJ & Others was handed down in 2013, a new government, led by President Sirisena came to office in January 2015 (see Sirisena-led Government: 2015–).

2.4.4 Following this, there have been positive developments including: curtailing of executive power; the reestablishment of independent commissions (and in particular the restoration of the legitimacy and independence of Sri Lanka's Human Rights Commission); de-proscription of a number of international diaspora organisations; review of cases held under the Prevention of Terrorism Act and release of some detainees. Measures such as the passing of the Right to Information Bill in June 2016 have also seen positive improvements towards more transparent and accountable government (see Election win and progress, De-proscription of Tamil groups and Reconciliation).

2.4.5 An improved environment for civil society and human rights defenders has also been reported (see General situation for Tamils).

2.4.6 The new government has also embarked on a process to formulate a new constitution which would include provision to recognise Tamil, as well as

Sinhala, as an official language; devolve power to Tamils; and to protect democracy (see Constitutional reform).

2.4.7 The President has also stated that more civilian lands would be freed from military control and that all perpetrators of war crimes committed towards the end of the country's civil war in 2009 would be brought to justice (see Accountability for war crimes).

b. Former LTTE members/supporters.

2.4.8 In the country guidance case of GJ & Others, the Tribunal identified as one of its four risk categories:

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

2.4.9 The Tribunal in GJ & Others also found that

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

2.4.10 Unlike in the past, returnees who have a previous connection with the LTTE are able to return to their communities without suffering ill-treatment. Civil society groups on the ground did not report recent issues of ill-treatment. The police interest, if any, is not in any previous involvement with the LTTE, but on whether the person has committed any criminal act. This is because many had left the country using forged identities and the police were therefore seeking to establish the true identity of the returning person and whether they are wanted for any criminal acts in addition to leaving the country with false documents (see Returns).

2.4.11 There are reports of arrest and detentions. However, the scale and extent is difficult to quantify. Reliable information is not available due to a lack of published data, vagaries and/or exaggeration in numbers cited and the potential lack of neutrality in pro-Tamil reportage (see Numbers and types of arrests and detainees).

2.4.12 Those former LTTE members most at risk are those outlined in GJ & Others – namely persons who are, or are perceived to be, a threat […] because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism. For the purposes of this note, a 'significant role' means those in the LTTE's former leadership (combat or civilian) and/or former members who were suspected to have committed terrorist or serious criminal acts during the conflict, or to have provided weapons or explosives to the LTTE (see Arrests, detention and treatment of actual or suspected LTTE supporters and Other issues for actual or suspected LTTE supporters).

2.4.13 The onus is on the person to demonstrate that their involvement with the LTTE (or other organisation) was of such a profile and nature as to equate to a 'significant role' such to make them of ongoing interest to the Sri Lankan authorities and/or that their activities will be, or will be perceived as being, a threat to the integrity of the state.

2.4.14 Being a non-Tamil perceived as having support for or involvement with Tamil separatist groups does not itself put a person more or less at risk or give rise to a well founded fear of persecution or serious harm in Sri Lanka (as demonstrated in Para 98 and Appendix F - Para 22 (vi) of GJ & Others).

c. Rehabilitation

2.4.15 Former LTTE combatants in Sri Lanka undergo rehabilitation to prepare them for civilian life. Former LTTE combatants returning from overseas are also offered rehabilitation on return. The certificate issued at the end of the programme proves the person has been rehabilitated and is a document which the person can show to the authorities if they are stopped by the police. Recent information indicates that the rehabilitation programme will be coming to an end once the last of the ex-LTTE combatants have completed the one year programme (see Rehabilitation of former LTTE combatants).

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

2.4.17 Some sources report that the post-rehabilitation monitoring can in some cases be intimidating and harassing (see Monitoring and surveillance).

2.4.18 However, the level of treatment is not sufficient to justify a departure from the Tribunal's findings in GJ & Others.

2.4.19 The UK Home Office undertook a fact-finding mission (FFM) to Sri Lanka from 11–23 July 2016 and visited the Rehabilitation centre in Vavuniya, Northern Province. The team were able to speak to the Rehabilitees (beneficiaries) freely and individually. The rehabilitees were keen to meet with the FFM team and were open about their experiences. There were 23 male rehabilitees in attendance at the centre at the time of the visit. These rehabilitees had previously spent a period of time in prison, then spending their last year in the Rehabilitation centre before being released. Most of the rehabilitees who met with the FFM team said that the conditions and treatment in the Rehabilitation centre were far better than they had experienced in prison (see section 29 of the Report of the UK Home Office's Fact-Finding Mission to Sri Lanka, 11–23 July 2016).

d. Sur place activities

2.4.20 In GJ & Others, the Upper Tribunal – noting that the Sri Lankan authorities' approach is based on sophisticated intelligence as to activities in the diaspora (paragraph 356 (8)) – did not consider that '...attendance at demonstrations in the diaspora alone is sufficient to create a real risk or a

reasonable degree of likelihood that a person will attract adverse attention on return to Sri Lanka' (paragraph 336).

2.4.21 The UT also found that

'...[a]ttendance at one, or even several demonstrations in the diaspora is not of itself evidence that a person is a committed Tamil activist seeking to promote Tamil separatism within Sri Lanka. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual' (paragraph 351).

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

2.4.23 However, the situation is not sufficiently different in principle to justify a departure from the Tribunal's findings in GJ & Others.

2.4.24 Decision makers must consider each case on its facts and consider whether any diaspora activities in which the person has engaged are, or are likely to be, perceived as a 'significant role' such to make them of ongoing interest to the Sri Lankan authorities and/or that their activities will be, or will be perceived as being, a threat to the integrity of the state.

e. Journalists and human rights defenders

2.4.25 The second of the four risk categories identified in GJ & Others concerned journalists and human rights defenders. For information and guidance on this group, see the country policy and information note on Sri Lanka: Journalists, media professionals and human rights activists.

f. Lessons Learned and Reconciliation Commission

2.4.26 The third of the four risk categories identified in GJ & Others are:

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

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

2.4.28 Unlike its predecessor, the current government – which was formed since GJ & Others was heard and promulgated – has shown willingness for allegations of war crimes during the final phase of the conflict to be fully investigated, and has established its own truth, justice, and reconciliation commission to investigate potential war crimes (see Accountability for war crimes).

2.4.29 It is therefore unlikely that the current Sri Lankan authorities would persecute those who have previously given evidence on abuses during the conflict. There may remain the possibility of rogue state agents seeking retribution.

2.4.30 Decision makers should take full account of the nature of the evidence given by the person, especially if the evidence is critical of the security forces actions at that time, which would increase the risk of retribution. Each case must be considered on its facts, with the onus on the person to show that they will have come to adverse attention.

g. Stop and watch lists

2.4.31 The fourth risk category identified in GJ & Others were those whose name appears on the 'stop list' at the airport.

2.4.32 The airport maintains a list of persons-of-interest by law enforcement agencies that have violated Sri Lankan law, which is updated regularly. Those on the 'watch list' are persons that are of interest to the authorities for minor offences or are former LTTE cadres; those on the 'stop list' are persons who have committed serious crimes, have a warrant outstanding, or perceived to be connected to terrorism (see Stop and watch lists).

2.4.33 The Upper Tribunal found that

'[a] person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant' (paragraph 356 (7d)).

2.4.34 For persons whose names appear on either the 'watch list' or 'stop list' the risk of ill-treatment following arrival in Sri Lanka will be as a result of arrest and detention by the authorities, rather than any prosecution itself for the crime or crimes for which the person is wanted.

h. Treatment in custody

2.4.35 Since the new government came to office in 2015, 'white van' abductions are now seldom reported. The number of torture complaints has greatly reduced. However, new cases of Tamil victims continue to emerge and police reportedly often continue to resort to violence and excessive force, particularly when extracting confessions. Such treatment is reported to be common in relation to criminal investigations, regardless of the nature of the suspected offence. Decision makers should also note that many human rights reports on Sri Lanka use the term 'torture' to cover a very wide range of treatment ranging from forceful questioning or threats, through to the most severe forms of ill-treatment (see Torture/ill-treatment, Enforced disappearances, "White van" abductions and the Report of the UK Home Office's Fact-Finding Mission to Sri Lanka, 11–23 July 2016).

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

2.4.37 The available information does not provide grounds for departing from that finding. Decision makers must make an assessment of the likelihood of the

person being detained on return based on the specific facts of the case and taking account of the factors outlined in the preceding sections.

i. Scarring

2.4.38 The Tribunal in GJ & Others noted

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

2.4.39 In considering scarring and allegations of torture generally, decision makers should take full account of any medical evidence produced. Expert medical evidence which potentially corroborates an account of torture must be given considerable weight – but it must still be considered within the sum of evidence to be taken into account. A medical report in support of an account of torture does not necessarily determine its credibility if other evidence provides good reason to reject the person's account of when and how scars (for example) were caused. There is no requirement, in the event that a report of scarring is outweighed by other evidence, to make findings or speculate as to other possible causes of the scarring (see section 4.6 in the Asylum Instruction on Assessing Credibility and Refugee Status).

2.4.40 Decision makers must also note the Court of Appeal's conclusions on self-inflicted scarring – or what has been referred to as "self-infliction by proxy" ("SIBP") – in the case of KV (Sri Lanka) v Secretary of State for the Home Department [2017] EWCA Civ 119 (07 March 2017).

j. Women

2.4.41 The guidance above applies equally to males and females. Decision makers must however take into full account of gender issues. There are a large number of female-headed households in the north and east of Sri Lanka, many of which are headed by women who were widowed during the conflict. Women in these situations face many challenges, including a lack of physical security for their family, a lack of permanent housing and economic opportunities and difficulties accessing health services. Women who are forced to seek employment outside the home face societal discrimination in Tamil and Muslim communities, who view them with suspicion. Being a woman does not itself put a person more or less at risk or give rise to a well founded fear of persecution or serious harm in Sri Lanka (see Women).

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

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2.5 Protection

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

2.5.2 Where the person's fear is of persecution and/or serious harm at the hands of rogue state actors, the person does have avenues of redress. The legitimacy and independence of Sri Lanka's Human Rights Commission has been re-established by the new government and is active in investigating complaints it receives. A Victim and Witness Protection Authority has been appointed under the law since January 2016, but a lack of credibility and confidence of people to come forward hampers the criminal justice mechanism (see Human Rights Commission of Sri Lanka (HRCSL)).

2.5.3 For further guidance on assessing the availability or not of state protection, see the Asylum Instruction on Assessing Credibility and Refugee Status.

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2.6 Internal relocation

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

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

2.6.3 Where the person's fear is of persecution and/or serious harm at the hands of rogue-state actors, but it does not amount to a real risk, they may be able to relocate to escape that risk.

2.6.4 For further information on considering internal relocation, see the Asylum Instruction on Assessing Credibility and Refugee Status.

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2.7 Certification

2.7.1 Where a claim based on the person supporting or being involved with Tamil separatism is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

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

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3. Policy Summary

3.1.1 The LTTE in Sri Lanka itself has not held any military power or political authority since the end of the civil war in 2009.

3.1.2 A person being of Tamil ethnicity would not in itself warrant international protection.

3.1.3 Neither, in general, would a person who evidences past membership or connection to the LTTE, unless they have or are perceived to have had a significant role in it; or if they are, or are perceived to be, active in post-conflict Tamil separatism and thus a threat to the state.

3.1.4 Participating in Diaspora activities, such as attending demonstrations, is not in itself evidence that a person will attract adverse attention on return to Sri Lanka. Each case should be considered on its own facts.

3.1.5 A person perceived to be a threat to the State through having or being perceived to have a 'significant role in relation to post-conflict Tamil separatism within the Diaspora and/or a renewal of hostilities within Sri Lanka' as held by the Upper Tribunal in GJ & Others are likely to be at risk of persecution on the basis of political opinion and a grant of asylum may be appropriate. Each case must be considered on its own facts.

3.1.6 The LTTE were involved in serious human rights abuses during the conflict and as such, there may be serious reasons for considering that the exclusion clauses apply.

3.1.7 If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection

3.1.8 A person who is known to the authorities, such as having their name on a 'stop' or 'watch' list or having a court order or an outstanding arrest warrant against them, is likely to be at risk of ill-treatment whilst in custody which may amount to persecution or serious harm. Each case must be considered on its own facts.

3.1.9 The presence of an LTTE inspired tattoo on a person is not in itself considered to put a person at increased risk, unless a person is likely to be detained and stripped during interrogation for other reasons.

3.1.10 A person fearing persecution and or serious harm by the state will not be able to relocate without risk.

3.1.11 Where a claim based on the person supporting or being involved with Tamil separatism is refused, it is unlikely to be certifiable as 'clearly unfounded'.

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Country information

Updated: 28 March 2017

4. Background information

4.1 Geography and demography

4.1.1 Sri Lanka is an island located in the Indian Ocean, Southern Asia, south of India and spans 65,610 sq km. The population was estimated to be around 22 million, made up predominantly (75 per cent) of Sinhalese. Other ethnic groups include: Sri Lankan Tamil, Sri Lankan Moors and Indian Tamil[1].

4.1.2 The Australian Government's Department of Foreign Affairs and Trade (DFAT) Country Information Report on Sri Lanka (DFAT Report), dated 24 January 2017, noted:

'According to the most recent census in 2012, the Tamil population was 3.1 million compared to 2.7 million in 1981. Thirty-two per cent of Tamils reside in the Northern Province, where they constitute approximately 93 per cent of the population. Twenty per cent of Tamils reside in the Eastern Province and 12 per cent in the Western Province (which includes the district of Colombo). Twelve per cent live in the Central Province. The remaining Tamil population is present in small numbers in the Southern, North Western, North Central, Uva and Sabaragamuwa provinces.'[2]

4.1.3 Buddhism is the official religion, represented by 70 percent of the population. Whilst other religious groups include: Hindu, Muslim and Roman Catholic[3].

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5. Political context

5.1 Conflict of 1983-2009

5.1.1 The DFAT Report provided an account of Tamil-Sinhalese relations, which led to the conflict:

'Historically, relations between Sri Lanka's ethnic majority–the Sinhalese–and the minority Tamil community have been tense. Tamils received preferential treatment during British rule, including through employment and education advantages. Following independence, the balance shifted and successive Sinhalese-led governments introduced discriminatory policies, including making Sinhala the country's only official language (from 1956-1987) and restricting access to higher education for Tamils. These actions contributed to a sense of marginalisation in the Tamil community and led to

[1] Central Intelligence Agency, 'CIA World Factbook, Sri Lanka', updated 12 December 2016, (Geography, People and Society), https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html, date accessed 9 January 2017
[2] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 3.5), 24 January 2017, date accessed 21 January 2017. Available on request.
[3] Central Intelligence Agency, 'CIA World Factbook, Sri Lanka', updated 12 December 2016, (People and Society), https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html, date accessed 9 January 2017

calls, from the 1950s onwards, for a separate Tamil state, Tamil Eelam, in the north and east of Sri Lanka.

'In July 1983, conflict broke out between the Sri Lankan military and the separatist Liberation Tigers of Tamil Eelam (LTTE). In May 2009, the Sri Lankan Government announced its military victory over the LTTE and complete territorial control over Sri Lanka. During the course of the long civil conflict, hundreds of thousands of people were displaced and tens of thousands of people were killed on both sides of the conflict.'[4]

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5.2 Main Tamil paramilitary groups and parties

5.2.1 For a list of the main Tamil paramilitary groups and parties which were allegedly involved in security operations with the Sri Lanka security forces, see the UN Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), published on 16 September 2015.

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6. Sirisena-led Government: 2015–

6.1 Election win and progress

6.1.1 Freedom House's 'Freedom in the World 2016' report on Sri Lanka, dated 20 June 2016, stated:

'Following a series of high-level defections from President Mahinda Rajapaksa's ruling United People's Freedom Alliance (UPFA), the government suffered a defeat to a newly unified opposition alliance in presidential elections held early in January 2015. Maithripala Sirisena of the Sri Lanka Freedom Party (SLFP), who was sworn in as president that month, ushered in a broad reversal of the country's authoritarian drift under Rajapaksa. Sirisena's 2015 reforms included the curtailing of executive power, the reestablishment of independent commissions, and the introduction of freedom of information legislation.

'Though Rajapaksa was able to win a seat in parliamentary elections held in August [2015], the opposition United National Party (UNP) captured the most seats and formed a government with the backing of smaller parties on a platform of undertaking a wide range of electoral and governance-related reforms. Ranil Wickremesinghe, long-time leader of the UNP, again became prime minister, and a new cabinet was drawn from a range of coalition partners, including the SLFP, one of the parties that comprised the UPFA. The pace of reforms promised by Sirisena, although initially slow due to divisions within the ruling coalition, improved in late spring, and accelerated even further after the parliamentary elections.'[5]

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[4] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraphs 2.1-2.2), 24 January 2017, date accessed 21 January 2017. Available on request.

[5] Freedom House, Freedom in the World 2016 - Sri Lanka, 20 June 2016, (Overview), https://freedomhouse.org/report/freedom-world/2016/sri-lanka, date accessed 12 January 2017

6.1.2 The UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, stated:

'The National Unity Government formed in September 2015 among a broad spectrum of political parties, including the Sri Lankan Freedom Party (SLFP) and the United People's Party (UNP), has consolidated its position, creating a political environment conducive to reforms. But the full promise of governance reform, transitional justice and economic revival has yet to be delivered and risks stalling or dissipating…

'Significant momentum has been achieved in the process of constitutional reform. On 10 March 2016, Parliament adopted a resolution establishing a constitutional assembly to draft and approve a new constitution or amendments by the end of 2016, which would then be put to a referendum in 2017. The drafting process has benefitted from an inclusive public consultation process overseen by a Public Representations Committee that received submissions and held district level consultations in the first quarter of 2016.'[6]

6.1.3 The same source added:

'The Government has also continued to take some important symbolic steps towards promoting reconciliation and changing the majoritarian political culture. In November 2015, the Government de-listed a number of Tamil diaspora organisations and individuals who had been proscribed under the Prevention of Terrorism Act (PTA) […]'[7]

See De-proscription of Tamil groups and Prevention of Terrorism Act.

6.1.4 The same source continued:

'[…]The decision to sing the national anthem in both Sinhala and Tamil on Independence Day in February 2016 for the first time since the early 1950s was a powerful gesture, followed the next day by the reciprocal visit of the Tamil Chief Minister of the Northern Province to a Buddhist temple in Jaffna. On 19 May 2016, the previously hubristic military celebrations of the 2009 victory were replaced by a more understated Remembrance Day.'[8]

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[6] The Office of the United Nations High Commissioner for Human Rights (OHCHR), UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, (Paras 8-9, p3), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_CRP._4_AV.docx, date accessed 1 March 2017

[7] The Office of the United Nations High Commissioner for Human Rights (OHCHR), UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, (Para11, p4), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_CRP._4_AV.docx, date accessed 1 March 2017

[8] The Office of the United Nations High Commissioner for Human Rights (OHCHR), UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports

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6.2 De-proscription of Tamil groups

6.2.1 The Rajapaksa government proscribed a number of Tamil groups active around the world who were not allowed to engage in Sri Lanka. A letter (Available on request) from the British High Commission in Colombo dated 30 November 2015, noted that the new government de-proscribed the following Tamil groups/ organizations:

'1. The Global Tamil Forum

'2. British Tamil Forum

'3. National Council of Canadian Tamils

'4. Tamil Youth Organisation

'5. World Tamil Coordinating Committee

'6. Canadian Tamil Congress

'7. Australian Tamil Congress

'8. Tamil National Council

'Membership or affiliation to the above groups is no longer regarded by the government of Sri Lanka as terrorism or terrorist activity. The members of these groups whether active or lay, have no reason to fear persecution as a consequence of their affiliation to them from the government of Sri Lanka.'[9]

6.2.2 Eight organizations and 157 individuals remain proscribed, as listed on the amended Gazette, No. 1941/44 – 20 November 2015[10].

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6.3 Constitutional reform

6.3.1 The DFAT Report, dated 24 January 2017, stated:

'President Sirisena's 2015 election platform included a commitment to reduce the powers of the President. On 28 April 2015 the parliament approved the 19th Amendment to the Sri Lankan Constitution, devolving some executive powers exercised by the President to the Prime Minister, the Cabinet of Ministers and Parliament. The 19th amendment also reduced the terms of President and Parliament from six years to five years, re-introduced a two-term limit for the President (which had been removed by former

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of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, (Para11, p4), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_CRP._4_AV.docx, date accessed 1 March 2017

[9] British High Commission (BHC), Colombo, letter dated 30 November 2015, accessed 17 February 2017

[10] The Gazette of the Democratic Socialist Republic of Sri Lanka Extraordinary, Part I: Section (I) – General, Government Notifications, The United Nations ACT, No. 45 OF 1968
Amendment to the List of Designated persons under Regulation 4 (7) of the United Nations Regulation No. 1 of 2012, 20 November 2015,
fiusrilanka.gov.lk/docs/UNSCR/List/1941_44(SL)/1941_44(E).pdf, date accessed 27 January 2017

President Rajapaksa in 2010), created independent commissions to oversee the judiciary, police, elections, human rights and the office of the Attorney-General, and re-established a Constitutional Council to make appointments to the new commissions.'[11]

6.3.2 The South Asia Terrorism Portal's Sri Lanka Assessment 2016 recorded:

'In a nationally televised Pongal (Tamil Harvest Festival) ceremony, on January 15, 2016, Prime Minister Ranil Wickremesinghe said his Government was ready to devolve power to minority Tamils under a new Constitution. "We are ready to devolve power (to minority Tamils) and protect democracy. The Constitutional Assembly will discuss with all, including (Tamil-dominated) provincial councils to have a new Constitution. We will do that in a transparent manner," he said'[12]

6.3.3 The South Asian Terrorism Portal noted in its Weekly Assessments & Briefings of January 2017, that:

'On March 9, 2016, the Sri Lankan Parliament unanimously and without a vote, approved the change of the Parliament into a Constitutional Assembly (CA) to draft a new Constitution for the island nation. The new Constitution is expected to replace the current executive President-headed Constitution adopted in 1978 and to replace it with a Parliamentary system. It could also partially replace the Proportional Representation system by the First Past the Post System. District-wise constituencies are also likely to be partially replaced by smaller constituencies and preferential votes for candidates in a party list could be abolished entirely.'[13]

6.3.4 As reported by Inside Story in September 2016, 'Today, much of the physical damage has been repaired. Since 2015, a new government led by President Maithripala Sirisena has championed a reform agenda that includes important commitments to end impunity, promote the rule of law, and encourage reconciliation. Yet political, social and psychological wounds run deep throughout the country, threatening the fragile progress made so far.'[14]

6.3.5 The DFAT Report added:

'Further constitutional reforms are underway with a view to finalising the text in 2017. The proposals include electoral reform and devolution of power in all nine provinces (which is particularly contentious in the Northern and

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[11] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraphs 2.27), 24 January 2017, date accessed 21 January 2017. Available on request.

[12] The South Asia Terrorism Portal (SATP), Sri Lanka Assessment 2016, http://www.satp.org/satporgtp/countries/shrilanka/index.html, date accessed 17 January 2017

[13] South Asian Terrorism Portal (SATP), South Asia Intelligence Review, Weekly Assessments & Briefings Volume 15, No. 28, 16 January, 2017, http://www.satp.org/satporgtp/sair/Archives/sair15/15_29.htm, date accessed 16 January 2017

[14] Inside Story, Unfinished business in Sri Lanka, 1 September 2016, http://insidestory.org.au/unfinished-business-in-sri-lanka, date accessed 13 January 2017

Eastern provinces), but at the time of writing, a draft Constitution was yet to be released. If the new constitution is passed by a two-thirds majority in Parliament, it will need to be endorsed by a referendum.'[15]

6.3.6 A report by the Centre for Policy Alternatives, Two Years In Government: A review of the pledges made in 2015 through the lens of constitutional reform, governance and transitional justice, published 2 February 2017 recorded:

'The political transition of January 2015 promised ambitious reforms and raised expectations accordingly. Two years after, serious concerns mount with regard to the National Unity Government's reform project.

'The ambitious proposals were made at a time when many Sri Lankans were desperate for change and seized the opportunity to vote in a government promising a return to governance. The primary objectives of the coalition that came together in 2014 were to defeat the government of former President Mahinda Rajapaksa and usher in political reform. Expectations were extremely high and bound to disappoint considering the scale and nature of reforms promised. Despite some successes, the current public perception is of a slow pace of reforms, reflected in their heightened disillusionment and disappointment and questions posed about the ability of the National Unity Government to govern effectively. These sentiments are justified in terms of promises made and the inability or unwillingness to manage expectations via a comprehensive communication strategy.'[16]

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6.4 Reconciliation

6.4.1 The DFAT Report noted:

'The 2015 Independence Day ceremony was attended by Tamil National Alliance (TNA) leaders for the first time since 1972 and President Sirisena delivered a trilingual Declaration for Peace in Sinhala, Tamil and English, paying respect to all victims who had lost their lives during the civil conflict (a significant step toward acknowledging losses on both sides). At the 2016 Independence Day ceremony the national anthem was sung in Tamil, as well as Sinhala. In 2015, the Government changed the name of the day commemorating the end of the conflict (held in May) from "Victory Day" to "War Heroes Remembrance Day" and for the first time gave official approval for memorial events to take place in the north and east.'[17]

6.4.2 The South Asia Terrorism Portal's Sri Lanka Assessment 2016 recorded:

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[15] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraphs 2.28), 24 January 2017, date accessed 21 January 2017. Available on request.

[16] Centre for Policy Alternatives, Two Years In Government: A review of the pledges made in 2015 through the lens of constitutional reform, governance and transitional justice, 2 February 2017, (Introduction, p4), http://www.cpalanka.org/wp-content/uploads/2017/02/2-February-2017-FINAL-REPORT-.pdf, date accessed 3 March 2017

[17] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 2.30), 24 January 2017, date accessed 21 February 2017. Available on request.

'In a nationally televised Pongal (Tamil Harvest Festival) ceremony, on January 15, 2016, Prime Minister Ranil Wickremesinghe [... added] that more civilian lands would soon be freed from military control and that the official language policy will be implemented where Sinhala and Tamil would be accorded the official language status. He also vowed to bring to justice all perpetrators of war crimes committed towards the end of the country's civil war in 2009.'[18]

6.4.3 The UN Committee Against Torture (CAT), Concluding observations on the fifth periodic report of Sri Lanka, 30 November 2016, stated:

'While welcoming the State party's commitment to address the widespread violations that occurred during and immediately after the internal conflict, indicated by its co-sponsorship of Human Rights Council resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka, the Committee notes that the State party has only just completed a process of national consultations and has not yet established institutions called for in that resolution, particularly a judicial mechanism with a special counsel, as well as a commission for truth, justice, reconciliation and non-recurrence and an office for reparations.'[19]

6.4.4 The DFAT Report of January 2017 noted:

'The Sirisena Government has prioritised human rights and reconciliation and has made significant progress, including: replacing military governors in the Northern and Eastern Provinces with civilians; returning some of the land held by the military since the conflict-era back to its former owners; releasing some individuals detained under the Prevention of Terrorism Act (PTA) and committing to reform the PTA; and engaging constructively with the United Nations. The Government also established an Office of National Unity and Reconciliation (ONUR) to develop a national policy on reconciliation.' [20]

6.4.5 The same source added:

'On 18 December 2015, the Sri Lankan Cabinet approved the formation of the Secretariat for Coordinating Reconciliation Mechanisms within the Prime Minister's Office to oversee mechanisms for advancing truth, justice and reconciliation in Sri Lanka; an Office on Missing Persons; an Office for Reparations; a Truth, Justice, Reconciliation and Non-Recurrence Commission; and a Judicial Mechanism with a Special Counsel. In January 2016, Prime Minister Wickremesinghe appointed an eleven-member Consultation Task Force on Reconciliation Mechanisms to conduct public

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[18] The South Asia Terrorism Portal (SATP), Sri Lanka Assessment 2016, http://www.satp.org/satporgtp/countries/shrilanka/index.html, date accessed 17 January 2017

[19] UN Committee Against Torture (CAT), Concluding observations on the fifth periodic report of Sri Lanka, 30 November 2016, (Ensuring accountability for past cases of torture and disappearance, p5), http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/LKIndex.aspx, date accessed 17 February 2017

[20] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 2.29), 24 January 2017, date accessed 21 January 2017. Available on request.

consultations on the design of the four mechanisms, with a final report to the President expected in 2017.' [21]

6.4.6 The Consultation Task Force on Reconciliation Mechanisms (CTF), publicly released its final report on 3 January 2017. The report reflected the views of people from across the country, gathered through public consultations. Recommendations included the creation of a war crimes court comprised of both international and national judges and other officials, with no time limit on its jurisdiction; a countrywide response to disappearances, financial and symbolic reparations; a constitutional and political settlement, resolution of longstanding land disputes; and attention to psychosocial needs.'[22]

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6.5 Accountability for war crimes

6.5.1 The Foreign and Commonwealth Office (FCO) noted in its report on Sri Lanka, dated 8 February 2017, that, in co-sponsoring a resolution in the UN HRC the government signalled its willingness to address long-standing allegations of past human rights abuses and violations. The report added 'In a positive change of approach, the government engaged constructively with the international community, including with the UN Office of the High Commissioner for Human Rights (OHCHR) and other UN bodies.'[23]

6.5.2 However, in May 2016, the Prime Minister announced ruling out international participation in a domestic Sri Lankan justice mechanism[24].

6.5.3 In resolution 30/1 the Human Rights Council requested OHCHR to continue to assess the progress on the implementation of its recommendations and other relevant processes related to reconciliation, accountability and human rights in Sri Lanka and to present a comprehensive report on the implementation of that resolution at its 34th session[25]. The 34th session was

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[21] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 2.32), 24 January 2017, date accessed 21 January 2017. Available on request.

[22] Consultation Task Force on Reconciliation Mechanisms (CTF), 'Final report of the consultation task force on reconciliations mechanisms', 3 January 2017, https://drive.google.com/drive/folders/0Bxbk4wYolphwSXBKSElMYnhlYTg, date accessed 22 February 2017

[23] Foreign and Commonwealth Office, 'Corporate Report, Democratic Socialist Republic of Sri Lanka – Human Rights Priority Country', 8 February 2017, https://www.gov.uk/government/publications/democratic-socialist-republic-of-sri-lanka-human-rights-priority-country/democratic-socialist-republic-of-sri-lanka-human-rights-priority-country, date accessed 22 February 2017

[24] UN Human Rights Council, 'Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka', (paragraph 32), 28 June 2016, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_CRP._4_AV.docx, date accessed 22 February 2017

[25] UN Human Rights Council, 'Thirty-fourth session 27 February-24 March 2017, Agenda and annotations', (paragraph 27), 18 January 2017, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/A_HRC_34_1_EN.docx, date accessed 22 February 2017

held from 7 February–24 March 2017. Documents from that session can be viewed at 34th session of the Human Rights Council: Reports.

6.5.4 The UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, stated:

'A major constraint remains the lack of a viable system for the protection of victims and witnesses. The new Government adopted a long pending law in February 2015, but this legislation has shortcomings that the High Commissioner has highlighted in previous reports. The Government committed in Resolution 30/1 to further review the law, although this has yet to occur. Meanwhile, a Victim and Witness Protection Authority has been appointed under the law since January 2016, although it has suffered from the departure of its first chairperson and the deployment of his replacement on another assignment overseas. Clearly the strengthening of an effective witness protection system, that is fit for the purpose of international crimes and that has the confidence of the people, will be essential before witnesses can have confidence to come forward and transitional justice mechanisms be considered credible.'[26]

6.5.5 The same source noted that there were '… paramilitary leaders, allegedly responsible for killings, abductions and widespread recruitment of child soldiers, [who] continue to hold public positions and have faced no criminal investigation.'[27]

6.5.6 The Rajapaksa government had previously denied allegations of war crimes committed in 2009, during the final phase of the conflict. However, the new government signalled willingness for the allegations to be investigated. As reported by Freedom House, 'In September 2015, the foreign minister promised at a UN Human Rights Council hearing to set up a truth, justice, and reconciliation commission to investigate atrocities.

See also Reconciliation.

6.5.7 The pledge was made at the same session at which the council released a damning report containing details of abuses committed by both sides.'[28]

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[26] The Office of the United Nations High Commissioner for Human Rights (OHCHR), UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, (Para 20, p6), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_CRP._4_AV.docx, date accessed 1 March 2017

[27] The Office of the United Nations High Commissioner for Human Rights (OHCHR), UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, (Para 19, p6), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_CRP._4_AV.docx, date accessed 1 March 2017

[28] Freedom House, Freedom in the World 2016 - Sri Lanka, 20 June 2016, (Overview), https://freedomhouse.org/report/freedom-world/2016/sri-lanka, date accessed 12 January 2017

6.5.8 The DFAT Report noted the principal findings of the UN's Office of the High Commissioner for Human Rights investigation into Sri Lanka (OISL):

'In September 2015, the report ... found that grave violations, including possible war crimes and crimes against humanity, were likely committed by both sides during the civil conflict. In response, the Sri Lankan Government co-sponsored a resolution in the UN Human Rights Council which, while recognising the progress Sri Lanka had made on reconciliation, committed Sri Lanka to implementing a range of transitional justice mechanisms and reconciliation projects.'[29]

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6.6 Human Rights Commission of Sri Lanka

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

- Education and Special Programmes,
- Administration and Finance,
- Monitoring and Review; and
- Inquiries and Investigations.[30]

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

'The National Human Rights Commission Act No. 21 of 1996 provides safeguards against arbitrary detention and torture or ill-treatment of detainees under the Prevention of Terrorism Act. Under section 28 of the Act, detention authorities must inform the Commission within 48 hours of any arrest made under the Prevention of Terrorism Act and the location of the detainee, as well as of any transfer or change of the prisoner's location. It further provides that all officials authorized by the Commission should have access to all places of detention at any time and be able to make inquiries of detainees.

'While most arrests and detentions under the Prevention of Terrorism Act are communicated to the National Human Rights Commission once they are registered, the Special Rapporteur concludes from testimonies and reports that this is not the case with respect to transfers and changes of location.'[31]

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[29] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 2.31), 24 January 2017, date accessed 21 January 2017. Available on request.

[30] Human Rights Commission of Sri Lanka, undated, http://hrcsl.lk/english/, date accessed 17 February 2017

[31] Office of the High Commissioner for Human Rights (OHCHR) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka, 22 December 2016, (National Human Rights Commission, p13), https://documents-dds-

See also Arrest and detention.

6.6.3 The Human Rights Watch (HRW), annual report 2017, recorded that: 'The National Human Rights Commission, though limited in resources, visited and actively monitored prisons and detention centers in 2016, and issued directives on procedures to be followed following arrest.'[32]

6.6.4 The report of the Special Rapporteur also noted:

'The National Human Rights Commission was resurrected with a credible composition of members in 2015, but needs to be further strengthened and funded. Proceedings before the Commission hold some promise for the victims, but it does not seem capable of remedying impunity for past and present serious human rights violations, which require effective prosecution. In addition, at least one victim has received threats of retaliation for filing a complaint with the Commission.' [33]

6.6.5 The Human Rights Commission of Sri Lanka, Report of the Human Rights Commission to the Committee against Torture; Review of the 5th Periodic Report of Sri Lanka, October 2016, stated:

'Since April 2016 the Commission has received complaints from family members, as well as those arrested and detained under the PTA, and in some instances has found that that due process was not followed, which creates space for torture- this included failure of officers to:

'a. identify themselves

'b. wear uniforms

'c. inform the person of the reason for the arrest

'd. issue an arrest receipt or receipts were issued in a language not understood by the detainee or his/her family.

'e. inform the family the place to which arrested person was being taken

'f. use official vehicles

'g. issue receipts for seizure of private property.'[34]

6.6.6 Further adding: 'Thirteen persons arrested under the PTA since April 2016 have complained of ill-treatment and torture, either at the time of arrest and/or during initial interrogation following arrest.'[35]

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ny.un.org/doc/UNDOC/GEN/G16/440/12/PDF/G1644012.pdf, date accessed 17 February 2017

[32] The Human Rights Watch (HRW), annual report 2017, 12 January 2017, (Sri Lanka- Police Torture and Ill-Treatment), https://www.hrw.org/world-report/2017/country-chapters/sri-lanka, date accessed 13 January 2017

[33] Office of the High Commissioner for Human Rights (OHCHR) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka, 22 December 2016, (Complaints procedure, p15), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/440/12/PDF/G1644012.pdf, date accessed 17 February 2017

[34] Human Rights Commission of Sri Lanka, Report of the Human Rights Commission to the Committee against Torture; Review of the 5th Periodic Report of Sri Lanka, October 2016. (Para 21, p7), http://www.ecoi.net/file_upload/1930_1483618448_int-cat-nhs-lka-25601-e.pdf, date accessed 10 March 2017

[35] Human Rights Commission of Sri Lanka, Report of the Human Rights Commission to the

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6.7 Office on Missing Persons

6.7.1 The DFAT Report noted that:

'On 11 August 2016, the Sri Lankan Parliament passed a Bill to establish the Office on Missing Persons (OMP), the first permanent and independent body established to address the issue of missing persons in Sri Lanka. Members of the OMP are appointed by the President on the recommendation of the Constitutional Council. The OMP has the power to investigate disappearances and trace missing persons, including the power to search detention centres, obtain documents and summon people within Sri Lanka. The OMP has a mandate to investigate cases that occurred in the lead-up to and during the civil conflict and in the post-conflict period when Rajapaksa was still President (May 2009 - January 2015). It will also cover earlier periods of violent political disturbance in the 1970s and 1980s. The OMP does not have a prosecutorial mandate. The previous Presidential Commission to Investigate into Complaints Regarding Missing Persons collected over 23,000 cases during its term; the volume of cases submitted to the OMP would likely exceed this amount. At the time of writing, the OMP was still being established and had not yet begun staff recruitment. The OMP does not have a pre-determined end date and is expected to take years to complete its work.'[36]

6.7.2 The UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, stated:

'However, the draft had not been publicly shared and discussed. When victims and civil society raised concerns regarding the limited public debate on the draft, there was a late effort to incorporate submissions from stakeholders, including meetings with victims and the Consultations Task Force. The draft legislation was approved in Cabinet in late May, gazetted on 27 May and tabled in Parliament on 22 June.

'More broadly, the Government signed the Disappearances Convention (CED) in December 2015 and completed its ratification in May 2016. Enabling legislation is now being drawn up and the High Commissioner hopes this will include criminalizing enforced disappearances in the Penal Code in line with Sri Lanka's obligations under the CED. On 7 June, the Cabinet of Ministers also approved draft legislation enabling the issuance of Certificates of Absence. The draft legislation has been gazetted and will be placed before Parliament shortly. The second report of the Presidential Commission on Missing Persons (Paranagama Commission) was tabled in

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Committee against Torture; Review of the 5th Periodic Report of Sri Lanka, October 2016. (Para 21, p8), http://www.ecoi.net/file_upload/1930_1483618448_int-cat-nhs-lka-25601-e.pdf, date accessed 10 March 2017

[36] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 2.29), 24 January 2017, date accessed 21 January 2017. Available on request.

Parliament in October, and it has continued to conduct hearings, but no information is available to OHCHR on further criminal investigation, including in a number of cases where the Commission identified Government perpetrators.'[37]

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7. General situation for Tamils

7.1.1 Reflecting on the human rights situation following Maithripala Sirisena's win in the presidential elections held early in January 2015, the US State Department's 2016 Country Report on Human Rights Practices (USSD Report 2016), Sri Lanka, published on 3 March 2017, observed that, 'The most significant human rights problems were incidents of arbitrary arrest, lengthy detention, surveillance, and harassment of civil society activists, journalists, members of religious minorities, and persons viewed as sympathizers of the Liberation Tigers of Tamil Eelam (LTTE).'[38]

7.1.2 The Human Rights Watch (HRW), annual report 2017, recorded however, that: 'The government failed to properly implement important recommendations to improve the human rights situation in the country, including a repeal of the PTA [Prevention of Terrorism Act] and reforms to the Witness and Victim Protection Law. Other undertakings, such as broader reform of the security sector and return of private lands confiscated by the military, were halting at best.'[39]

See also Prevention of Terrorism Act.

7.1.3 A 26 August 2016 report published by INFORM, entitled 'Human Rights Situation in Sri Lanka: August 17, 2015 – August 17, 2016' stated:

'Unemployment, debt, and sexual and gender-based violence is widespread in the former war ravaged areas. The new Government's economic and development policies are focusing on trade, investment, and mega development projects, which privilege the rich and marginalise the poor. Pre-war rights issues, such as landlessness, sexual and gender-based violence and discrimination, caste, rights of workers, including those working on tea estates, still need to be addressed.'[40]

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[37] The Office of the United Nations High Commissioner for Human Rights (OHCHR), UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, (Para 30, p7-8), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_CRP._4_AV.docx, date accessed 1 March 2017

[38] US State Department's 2016 Country Report on Human Rights Practices (USSD Report 2016), Sri Lanka, published on 3 March 2017, (Section 1. c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment), https://www.state.gov/documents/organization/265760.pdf, date accessed 6 March 2017

[39] The Human Rights Watch (HRW), annual report 2017, 12 January 2017, (Accountability for Past Abuses), https://www.hrw.org/world-report/2017/country-chapters/sri-lanka, date accessed 13 January 2017, date accessed 13 March 2017

[40] INFORM, Human Rights Situation in Sri Lanka: August 17, 2015 – August 17, 2016, 26 August 2016, (Towards Rights & Democratization beyond Transitional Justice framework),

7.1.4 A statement on 9 February 2016, by the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, at the end of his mission to Sri Lanka, read:

'The element of fear has considerably diminished, at least in Colombo and the South. In the North and the East, it has mutated but, sadly, still exists. Virtually everyone agrees there has been progress, although opinions differ markedly about the extent of that progress… One of the most important long-term achievements over the past year has been the restoration of the legitimacy and independence of Sri Lanka's Human Rights Commission. The appointment of new leadership of great integrity, through the proper constitutional process, offers a new start to revitalise this all-important national institution.'[41]

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8. Arrests, detention and treatment of actual or suspected LTTE supporters

8.1 Prevention of Terrorism Act

8.1.1 As noted in the DFAT Report on Sri Lanka, dated 24 January 2017:

'[T]he Prevention of Terrorism Act (PTA) allows authorities to detain suspects without charge for up to 72 hours. After this period has elapsed, a suspect must either be produced before a magistrate or can be held without charge under detention orders for three-month periods not exceeding 18 months.

'The Sirisena government has taken some limited action to deal with individuals detained without charge under the PTA by the former Rajapaksa government. In August 2016, the Minister of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs reported that the Government had released 39 detainees on bail and has committed to streamlining judicial processes for PTA cases, including consideration of rehabilitation as an alternative to custody. The Government has undertaken to amend the PTA and replacement legislation is currently before the Parliamentary Oversight Committee.'[42]

8.1.2 The UN Committee on the Elimination of Racial Discrimination expressed concern in its October 2016 reported that:

'[T]he Prevention of Terrorism Act has a disproportionate impact on ethnic and ethno-religious minorities, such as Tamils, who have reportedly been targeted for arbitrary arrests and detentions under the Act, and that the Act

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https://ihrdc.files.wordpress.com/2016/12/human-rights-in-sl-one-year-after-parliamentary-elections-inform-18aug20161.pdf, date accessed 13 March 2017

[41] The United Nations Office in Geneva, A Statement by United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, at the end of his Mission to Sri Lanka, dated 9 February 2016, http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/775FCDCB6B14D5F3C1257F5400383767?OpenDocument, date accessed 17 January 2017

[42] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraphs 4.23-4.24) 24 January 2017, date accessed 21 February 2017. Available on request.

may be used to stifle freedom of expression. The Committee is also concerned that the Act allows for prolonged detentions without due process. In particular, it takes note of reports that some individuals have been detained under the Act without trial for more than 20 years. The Committee notes with concern that, although the State party has agreed to repeal the Act, arrests continue to be made under it (arts. 1, 2, and 5).'[43]

8.1.3 Human Rights Watch's annual report, dated January 2017, noted:

'The government attempted a redraft of the Prevention of Terrorism Act but was forced to withdraw it when it failed to meet international standards. A second draft forwarded in October [2016] did not ease concerns about ensuring rights of detainees and protecting against custodial torture. The special rapporteur on torture expressed particular concern about detainees held under the PTA and called for its unequivocal repeal.

'The PTA allows for arrests for unspecified "unlawful activities" without warrant and permits detention for up to 18 months without the suspect appearing before a court. It has facilitated thousands of abuses over the years, including torture, enforced disappearances, and extrajudicial executions.

'While especially problematic during Sri Lanka's long civil war, authorities continued to use the PTA even after the war ended. Following the discovery of suicide vests in Chavakchcheri in the north, security forces reportedly arrested 11 men in April and May [2016]. Many of the arrests were first undeclared, with families reporting only that security forces had abducted the men. Following pressure, particularly from the National Human Rights Commission, security forces admitted to holding them under the PTA.'[44]

8.1.4 A press release by HRW on 12 January 2017, stated:

'The government charged or released several people detained under the Prevention of Terrorism Act (PTA) and disclosed numbers of those still in custody. However, the government not only failed to repeal the draconian law in 2016, but security forces made new arrests under the PTA throughout the year. Two draft anti-terrorism bills, designed to replace the PTA, both fell far short of Sri Lanka's obligations under international law.'[45]

8.1.5 Furthermore, an Inside Story article published in September 2016, noted that, '… the government's pledge to the Human Rights Council that it would replace the Prevention of Terrorism Act with new laws consistent with human rights standards. Despite that undertaking, police continue to make arrests

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[43] UN Committee on the Elimination of Racial Discrimination, 'Concluding observations on the combined tenth to seventeenth periodic reports of Sri Lanka', (paragraph 14), 6 October 2016, available at ecoi.net: http://www.ecoi.net/file_upload/1930_1478853891_g1622637.pdf, date accessed 23 February 2017

[44] Human Rights Watch (HRW), annual report 2017, 12 January 2017, (Sri Lanka- Prevention of Terrorism Act and Politically Motivated Torture), https://www.hrw.org/world-report/2017/country-chapters/sri-lanka, date accessed 13 January 2017

[45] Human Rights Watch, Sri Lanka: Delays Set Back Justice, 12 January 2017, https://www.hrw.org/news/2017/01/12/sri-lanka-delays-set-back-justice, date accessed 13 January 2017

under this repressive legislation, and some 200 Tamils are still detained under its provisions, many held for years without charge.'[46]

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8.2 Procedures

8.2.1 Article 12(1) of the Constitution (as amended up to 15th May 2015) Revised Edition – 2015, states: 'All persons are equal before the law and are entitled to the equal protection of the law.'[47]

8.2.2 The issue of police powers to arrest was addressed in the UN Committee Against Torture (CAT), Concluding observations on the fifth periodic report of Sri Lanka, 30 November 2016, noting:

'The Committee is concerned that the broad police powers to arrest suspects without a court warrant has led to the practice of detaining persons while conducting the investigations as a means to obtain information under duress. The Committee notes allegations that police investigators often fail to register detainees during the initial hours of deprivation of liberty or to bring them before a magistrate within the time-limit prescribed by law, during which time torture is particularly likely to occur.'[48]

See also Torture/ill-treatment.

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

'The Code of Criminal Procedure Act contains procedural safeguards to protect the integrity of a person arrested or detained, including the right to be informed of the nature of the charge or allegation upon which he or she is arrested (art. 23) and to be presented to a magistrate without undue delay and within 24 hours (arts. 36 and 37 and art. 65 of Police Ordinance No. 16 of 1865). Officers in charge of police stations are further required to report to the relevant magistrates all cases of persons arrested without a warrant (art. 38). If an investigation cannot be completed within 24 hours, only the magistrate may decide to detain a suspect in custody pending investigation and for a maximum of 15 days (art. 115 (1) and (2)).'[49]

8.2.4 The same report added however, that:

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[46] Inside Story, Unfinished business in Sri Lanka, 1 September 2016, http://insidestory.org.au/unfinished-business-in-sri-lanka, date accessed 13 January 2017

[47] The Parliament of Sri Lanka, The Constitution of the Democratic Socialist Republic of Sri Lanka, (As amended up to 15th May 2015) Revised Edition – 2015, (Article 12 Right to equality), https://www.parliament.lk/files/pdf/constitution.pdf, date accessed 13 March 2017

[48] UN Committee Against Torture (CAT), Concluding observations on the fifth periodic report of Sri Lanka, 30 November 2016, (Allegations of routine torture during police detention, p2), http://www.ohchr.org/EN/countries/AsiaRegion/Pages/LKIndex.aspx, (via the OCHCR), date accessed 17 January 2017

[49] UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka, 22 December 2016, (C. Safeguards and prevention, 1. Right not to be arbitrarily detained and to be free from torture, Para 70, p12), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2, date accessed 13 March 2017

'The Special Rapporteur notes with concern, however, that neither the Penal Code nor the Code of Criminal Procedure Act specifies that an arrest warrant must be authorized by a judge, giving the police extraordinary powers of arrest and increasing the risk of arbitrary detention and of torture and ill-treatment. Moreover, the Special Rapporteur received credible testimonies that suspects are often first detained for interrogation at official or unofficial places of detention without being registered during the initial hours or days and not brought before a judge, especially detainees under the Prevention of Terrorism Act who are held incommunicado. This facilitates the perpetration of torture and other ill-treatment and can in itself constitute such treatment.'[50]

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

'Reinforcing the stigmatization of the Tamil identity is the continued application of the Prevention of Terrorism Act, which affects the Tamil population disproportionately. Despite the heavy criticism it has received nationally and internationally for allowing prolonged detention without due process, the Government has reportedly continued to rely on the Act to make new arrests, including exiled Tamils returning to Sri Lanka.'[51]

8.2.6 According to Amnesty International's annual report, published 22 February 2017:

'In June [2016], President Sirisena instructed the police and armed forces to abide by Human Rights Commission of Sri Lanka directives, that were designed to protect those arrested under the PTA and other emergency measures and to end practices that can lead to abuse. Such abuses include the failure of arresting officials to identify themselves, the transport of suspects in unmarked vehicles, and the use of unofficial places of detention.'[52]

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8.3 Access to legal assistance

8.3.1 The Sri Lankan NGO Collective's 'Joint Alternative Report', 13 October 2016, noted:

'There is no effective legal aid system to assist victims. Legal Aid Commission provides legal assistance to persons whose income level may

[50] UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka, 22 December 2016, (C. Safeguards and prevention, 1. Right not to be arbitrarily detained and to be free from torture, Para 71, p12), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2, date accessed 13 March 2017

[51] The Human Rights Council, The UN Human Rights Council, Report of the Special Rapporteur on minority issues on her mission to Sri Lanka - Note by the Secretariat, 31 January 2017, (Specific groups of concern - C. Tamils in the North and East, Para 52, p13), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/53/Add.3, date accessed 3 March 2017

[52] Amnesty International Report 2016/17 - The State of the World's Human Rights - Sri Lanka, (Arbitrary arrests and detentions), 22 February 2017, https://www.amnesty.org/en/countries/asia-and-the-pacific/sri-lanka/report-sri-lanka/, date accessed 23 February 2017

not exceed Rs. 8,000/= per month. This income limit incapacitates many of the population to access legal aid.

'Lawyers who attempt to visit detainees held under the PTA are frequently denied meeting them, preventing the right of legal counsel. Lawyers have limitations in meeting suspects held by the CID and the TID, and if they are permitted, such permission is not granted immediately after the arrest.'[53]

8.3.2 According to Amnesty International's annual report, published 22 February 2017:

'In June [2016], President Sirisena instructed the police and armed forces to abide by Human Rights Commission of Sri Lanka directives […which] also guaranteed detainees' access to a lawyer, including during interrogation, but these were not fully respected.

'An amendment to the Code of Criminal Procedure that would have deprived those arrested of access to legal counsel until the police recorded their statements was withdrawn in October after lawyers protested.'[54]

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8.4 Numbers and types of arrests and detainees

8.4.1 On 11 November 2015 the Sri Lankan courts granted bail to dozens of ethnic Tamils jailed under the country's strict anti-terrorism laws following a hunger strike by prisoners. Tamil politicians asked the authorities to release them, grant them bail or put them on trial[55]. Some 223 Tamil prisoners jailed in Colombo, Anuradhapura, Jaffna and Kandy, many held without charge since the 1990s and held under the Prevention of Terrorism Act (PTA), went on hunger strike to press for their release. Most had been imprisoned on suspicion of links with the defeated Tamil Tiger rebel group. Human rights campaigners have in the past given a figure of more than 650 Tamil detainees[56].

8.4.2 The US State Department's 2016 Country Report on Human Rights Practices (USSD Report 2016), Sri Lanka, published on 3 March 2017, reported on the hunger strikes by dozens of prisoners across the country in October 2016, including former LTTE cadres 'demanding an immediate resolution to their protracted detention'. The majority of these prisoners were being held under the PTA without charge.'[57]

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[53] Sri Lankan NGO Collective against torture, Joint Alternative Report, 13 October 2016, (Access to legal counsel, p15), http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT_CAT_CSS_LKA_25598_E.pdf, date accessed 7 March 2017

[54] Amnesty International Report 2016/17 - The State of the World's Human Rights - Sri Lanka, (Arbitrary arrests and detentions), 22 February 2017, https://www.amnesty.org/en/countries/asia-and-the-pacific/sri-lanka/report-sri-lanka/, date accessed 23 February 2017

[55] The Wall Street Journal, Sri Lanka Releases Dozens of Jailed Tamils, 11 November 2015, http://www.wsj.com/articles/sri-lanka-releases-dozens-of-jailed-tamils-1447258703, date accessed 13 January 2017

[56] BBC, Sri Lanka Tamil prisoners on hunger strike demand release, 12 October 2015, http://www.bbc.co.uk/news/world-asia-34509955, date accessed 17 December 2015

[57] US State Department's 2016 Country Report on Human Rights Practices (USSD Report 2016), Sri

See also Prevention of Terrorism Act.

8.4.3 The Association des étudiants tamouls de France, written statement submitted by the Association des étudiants tamouls de France, a non-governmental organization in special consultative status; PTA detainees without any charges in Sri Lanka, 9 June 2016, stated:

'There have been numerous allegations of secret detention centres, notorious for torture, run under the former Rajapaksa Government, where many families of the disappeared claim their loved ones were being held. Both, the Rajapaksa Government and the current government have vehemently denied the existence of such secret camps, with Prime Minister, Ranil Wickramasinghe going on to say, that those "categorized as missing were either dead due to the conflict or living overseas."

'However, a recent shocking media exposé revealed information given to Courts by an investigating CID officer and several naval officers who had spoken to, and served food to detainees held at such secret camps. A camp run by the Navy named 'Gun Side' in Trincomalee was named in particular.'[58]

8.4.4 Bishop Emanuel informed the team from a UK Home Office Fact Finding mission to Sri Lanka in July 2016 that he had not heard of any reports of arrests or torture in Trincomolee due to a perceived previous connection with the LTTE[59].

See also Torture/ill-treatment.

8.4.5 Tamil Net reported on TID arrests in November 2016, recording:

'The 'Terrorist' Investigation Division (TID) of genocidal Sri Lanka has staged at least 8 abduction-styled arrests in Jaffna within the past three days. The arrests have been carried out under the 'Prevention of Terrorism Act', according to the SL [Sri Lankan] Police. The explanation given by the TID, especially when questioned by the families of arrested persons, was that the persons were being targeted for alleged involvement in criminal gangs. The 'arrests' come after a period of heightened propaganda in South that there was a gang named 'Avva' operating in Jaffna beyond the control of SL Police and military. One of the arrested is said to be a law student and an active supporter of Tamil National Peoples' Front, who was engaged in democratic mobilization, especially during the Ezhuka Thamizh uprising in Jaffna.'[60]

Lanka, published on 3 March 2017, (Arrest Procedures and Treatment While in Detention), https://www.state.gov/documents/organization/265760.pdf, date accessed 6 March 2017

[58] The Association des étudiants tamouls de France, Written statement submitted by the Association des étudiants tamouls de France, a non-governmental organization in special consultative status; PTA detainees without any charges in Sri Lanka, 9 June 2016, (Allegations of Secret Detention Centres, p3), http://www.ecoi.net/file_upload/1930_1470908158_g1611556.pdf, date accessed 9 March 2017

[59] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 10: Meeting with Bishop Emanuel, Trincomalee, 16 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 13 January 2017

[60] Tamil Net, Occupying Colombo stages 'PTA abductions' in Jaffna citing criminal gangs, 7 November 2016, http://www.tamilnet.com/art.html?catid=13&artid=38474, date accessed 9 March

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

'While the numbers are disputed (no list of detainees has been released), a significant number of persons remain in remand detention under the Act, the longest-serving for 15 years. According to the National Human Rights Commission of Sri Lanka, 111 persons were in remand custody under the Act as at May 2016, 29 of whom had not been indicted. The Commission notes that this figure does not take into account "a spate" of arrests under the Act that followed since then. It should also be noted that these figures do not include those persons sent for "rehabilitation" in lieu of prosecution, which is another form of arbitrary detention affecting Tamils.'[61]

8.4.7 The DFAT report dated 24 January 2017 observed:

'Those at highest risk of monitoring, arrest, detention or prosecution include the LTTE's former leadership, regardless of whether they performed a combat or civilian role during the conflict. Although most of the LTTE's leadership were killed during the conflict, a number surrendered or were captured and sent to rehabilitation centres or prosecuted. Some former leaders may have left Sri Lanka before, during or after the conflict. Former members who were suspected to have committed terrorist or serious criminal acts during the conflict, or to have provided weapons or explosives to the LTTE may also be considered high-profile.' [62]

8.4.8 According to Amnesty International's annual report, published 22 February 2017, Tamils suspected of links to the Liberation Tigers of Tamil Eelam (LTTE) continued to be detained under the Prevention of Terrorism Act (PTA)[63].

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8.5 Torture/ill-treatment

8.5.1 Article 11 of the Constitution (as amended up to 15th May 2015) Revised Edition – 2015, states: 'No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'[64]

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[61] The Human Rights Council, The UN Human Rights Council, Report of the Special Rapporteur on minority issues on her mission to Sri Lanka - Note by the Secretariat, 31 January 2017, (Specific groups of concern - C. Tamils in the North and East, Para 52, p13), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/53/Add.3, date accessed 3 March 2017

[62] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 3.38), 24 January 2017, date accessed 21 January 2017. Available on request.

[63] Amnesty International Report 2016/17 - The State of the World's Human Rights - Sri Lanka, (Arbitrary arrests and detentions), 22 February 2017, https://www.amnesty.org/en/countries/asia-and-the-pacific/sri-lanka/report-sri-lanka/, date accessed 23 February 2017

[64] The Parliament of Sri Lanka, The Constitution of the Democratic Socialist Republic of Sri Lanka, (As amended up to 15th May 2015) Revised Edition – 2015, (Article 11 Freedom from torture), https://www.parliament.lk/files/pdf/constitution.pdf, date accessed 13 March 2017

8.5.2 The International Truth and Justice Project (ITJP) report, A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence 2009-2015, published in July 2015, documented 180 cases of post-war torture and/or sexual violence in Sri Lanka. Of these it had recorded 115 statements from witnesses and survivors, of which 100 were 'white van' abduction survivors. The report stated that 'The vast majority of victims of torture and sexual abuse in Sri Lanka are Tamils' and that 'These were people the security forces suspected of assisting the LTTE in the past and they have been rigorously hunted down and punished extra judicially in the post-war period.'[65]

8.5.3 A report by Human Rights Watch, "We Live in Constant Fear" - Lack of Accountability for Police Abuse in Sri Lanka, published 23 October 2015, claimed that:

'Police use of torture against criminal suspects cannot be dismissed as a wartime phenomenon. Human Rights Watch found that even after the decisive defeat of the LTTE, certain branches of the police continued to routinely engage in torture, including sexual abuse, to extract confessions or information from suspected LTTE members or supporters. In addition, police have been implicated in enforced disappearances, extrajudicial executions, and abductions of those suspected, however loosely, of ties to the LTTE. ...

'Police abuses against criminal suspects in Sri Lanka, including arbitrary arrests, due process violations, and torture, are common and widespread. In many cases, the police use torture and other forms of coercion as a shortcut to obtain confessions or other information to facilitate convictions. Some of the cases reported to Human Rights Watch involved very minor alleged offenses, such as petty theft or vandalism, and the reasons for the custodial abuse were often unclear.

'The abuses documented by Human Rights Watch often occurred in police custody, and appeared to end when the victim was finally produced before a magistrate and remanded to jail pending trial.'[66]

8.5.4 The US State Department's 2015 Country Report on Human Rights Practices (USSD Report 2015), Sri Lanka, published in April 2016, noted:

'In the east and north, military intelligence and other security personnel, sometimes allegedly working with paramilitary groups, were responsible for the documented and undocumented detention of civilians accused of LTTE connections. Observers reported that interrogation sometimes included mistreatment or torture following detention. There were reports that

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[65] International Truth and Justice Project (ITJP), A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence 2009-2015, July 2015, (Executive Summary p.7 and IV. Findings p.28), http://www.itjpsl.com/assets/stoptorture_report_v4_online.pdf, date accessed 13 January 2017

[66] Human Rights Watch, "We Live in Constant Fear" - Lack of Accountability for Police Abuse in Sri Lanka, 23 October 2015, (History of Impunity, Police Torture and Other Abuse), https://www.hrw.org/report/2015/10/23/we-live-constant-fear/lack-accountability-police-abuse-sri-lanka, date accessed 13 January 2017

authorities released detainees with a warning not to reveal information about their arrest or detention, under the threats of re-arrest or death.'[67]

8.5.5 The UN Special Rapporteur on the Committee Against Torture report, following a visit to Sri Lanka in April/May 2016, found an overall decline in torture, noting:

'While the practice of torture is less prevalent today than during the conflict and the methods used are at times less severe, the Special Rapporteur concludes that a "culture of torture" persists; physical and mental coercion is used against suspects being interviewed, by both the Criminal Investigations Department in regular criminal investigations and by the Terrorism Investigation Division in investigations under the Prevention of Terrorism Act. In the latter case, a causal link seems to exist between the level of real or perceived threat to national security and the severity of the physical suffering inflicted by agents of the Division during detention and interrogation.'[68]

8.5.6 The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment's May 2016 preliminary findings, recorded:

'The nature of the acts of torture consists mainly of transitory physical injuries caused by blunt instruments (essentially punches, slaps and, occasionally, blows with objects such as batons or cricket bats) which heal by themselves without medical treatment and leave no physical scars. There were also several accounts of brutal methods of torture, including beatings with sticks or wires on the soles of the feet (falanga); suspension for hours while being handcuffed, asphyxiation using plastic bags drenched in kerosene and hanging of the person upside down; application of chili powder to face and eyes; and sexual violations including mutilation of the genital area and rubbing of chili paste or onions on the genital area. While these methods of torture were of short duration in some cases, in others, torture occurred over a period of days or even weeks during interrogation.'[69]

8.5.7 Bishop Emanuel – a Catholic Bishop whom the Tamil community look to as a leader – informed the UK FFM team in July 2016 that whilst he had not heard of any reports of arrests or torture in Trincomolee he did note that, '[…] in general, if a person has a previous connection with the LTTE, then

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[67] US Department of State, Country Reports on Human Rights Practices for 2015: Sri Lanka, 13 April 2016, (Section 1. c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment), http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=252975#wrapper, date accessed 12 January 2017

[68] UN Human Rights Council, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka', (paragraph 22), 22 December 2016, http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/34/54/Add.2&Lang=E, date accessed 22 February 2017

[69] United Nations Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez* on the Official joint visit to Sri Lanka – 29 April to 7 May 2016, 7 May 2016, (Preliminary findings - Prevalence of torture and ill-treatment), http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943&LangID=E, date accessed 9 March 2017

arrest and detention will happen. Ill-treatment happens in PTA [Prevention of Terrorism Act] detention. The authorities monitor the houses of people who have left the country. A person who is ill-treated could report the incident to the HRC [Human Rights Commission][70].

See also Prevention of Terrorism Act.

8.5.8 The Bishop further added:

'Most of the time when people return [from outside the country] there is the possibility they will be arrested. So for this reason many people refuse to return. The military keep a watch on their houses and the family remaining in Sri Lanka, but this will only be if the person has committed a serious crime in the past. Even if the crime or death/murder through conflict was 20 years ago, the person will still be investigated. In these cases, if torture is to be used to get information, they will not hesitate to use it. The possibility is always there for torture to be used.'[71]

8.5.9 The UK FFM team also met with representatives from a peace building and human rights organisation in Colombo, who commented that:

'In the North and East there are less reports of torture, artificially less, because Tamils are afraid to complain, but in the South if there is torture, the Sinhalese will complain, there are lots of complaints.

'In the south it is more to do with criminal activity but in the north it is more to do with the army. Torture does not mean for example, a person's nails will be pulled out; it could mean just a slap, heavy questioning or threatening. It is the idea that someone could get tortured which causes the fear. It is not really necessary to touch a person as they are so scared.'[72]

8.5.10 Describing the various torture methods used, an official from Rights Now, a non-governmental organisation (NGO), informed the UK FFM team that:

'Verbal abuse (shouting); beating with fists; kicking. Sometimes clubs and canes are used; sometimes sexual abuse for suspected terrorists. The ill treatment is not as intense as during the conflict but still occurs. People don't think of it as wrong – officials think it is ok. Extra-judicial killings have stopped.' The official added that, 'Such ill-treatment does not systematically occur but is used by some rogue police officers and others do not have the authority to stop them.'[73]

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[70] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 10: Meeting with Bishop Emanuel, Trincomalee, 16 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 13 January 2017

[71] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 26: Meeting with Security Forces (SF) Commander for Jaffna, 13 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 13 January 2017

[72] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 12: Meeting with with a peacebuilding and human rights organisation, Colombo, 21 July 2016, (General questions), https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

[73] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 1: Meeting with an official from Rights Now, a non-governmental organisation (NGO), 11 July 2016,

For further information on arrests, detentions and ill-treatment, see the Report of the UK Home Office's Fact-Finding Mission to Sri Lanka, 11–23 July 2016, in particular meetings with: an official from Rights Now (section 1), Fr. Elil Rajendram SJ (section 8), Bishop Emanuel in Trincomalee (section 10), a peacebuilding and human rights organisation in Colombo (section 14), the Centre for Human Rights and Research (CHRR) (section 23), a UN Senior Human Rights Advisor in Sri Lanka (section 22), an official from the National Police Commission (NPC) (section 25), the Honourable Austin Fernando, Governor of the Eastern Province (section 30); and the Commissioner of Prison (Intelligence and Security), Prison Headquarters, Colombo (section 33).

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9. Other issues for actual or suspected LTTE supporters

9.1 Rehabilitation of former LTTE combatants

9.1.1 The DFAT Report noted

'Since the end of the civil conflict, the Sri Lankan Government has managed a large-scale rehabilitation process for former LTTE. There were 24 rehabilitation centres across Sri Lanka and according to Sri Lanka's then Minister for External Affairs, GL Peiris, as of March 2014, a total of 12,288 LTTE members had been arrested and sent to rehabilitation centres since the end of the conflict in 2009.'[74]

9.1.2 In March 2016 TamilNet reported that intelligence operatives and military surveillance officers are conducting fresh 'registrations' of people living across the 14 divisions of Batticaloa district. It further noted that 'Regardless of their release after prolonged detention and so-called military rehabilitation, they are being again subjected to questions for their presence in Vanni, whether they had received training from the LTTE, did they participate in combat, where they are employed now and how they receive money.'[75]

9.1.3 The US State Department's 2015 Country Report on Human Rights Practices (USSD Report 2015), Sri Lanka, published on 13 April 2016, noted that:

'Reintegration of former combatants and other detainees released from rehabilitation remained challenging due to intensive surveillance by the military, social stigma (some persons were afraid to associate themselves with former combatants, who regularly had to report to the army), employment difficulties, and psychological trauma. Several released former

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https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

[74] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 3.34), 24 January 2017, date accessed 21 January 2017. Available on request.

[75] Tamil Net, Colombo resumes surveillance of Eezham Tamils through 'registration' in Batticaloa, 5 March 2016 http://www.tamilnet.com/art.html?catid=13&artid=38169 date accessed 12 January 2017

combatants reported torture or mistreatment, including sexual harassment and abuse by government officials while in rehabilitation centers and after their release.'[76]

9.1.4 At the time of a visit to the one remaining rehabilitation centre in Vavuniya on 15 July 2016, the UK Home Office's FFM team were informed that there were 23 male "beneficiaries" (rehabilitees) at the centre. At least 12 were due to have left the centre by the end of 2016, having completed 12 months of rehabilitation, which included leadership training, vocational skills, and meditation. The Vavuniya centre was able to accommodate 100 beneficiaries. Upon leaving the centre, beneficiaries received a certificate confirming their rehabilitation[77]. During the visit to the Rehabilitation Centre the FFM team were able to speak to the Rehabilitees freely and individually.

For further information about the rehabilitation of former LTTE combatants, see the Report of the UK Home Office's Fact-Finding Mission to Sri Lanka, 11–23 July 2016, in particular the Visit to the Rehabilitation Centre, Vavuniya (section 29), the meeting with the Bureau of the Commissioner General of Rehabilitation (section 35); and between representatives from the British High Commission and Hon. Minister Swaminathan, of the Prison reform, Rehabilitation, Resettlement and Hindu religious affairs (section 36)

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9.2 Allegations of poisoning of former LTTE cadres

9.2.1 An article by Journalists for Democracy in Sri Lanka in September 2016, following Tamil lawyers' call on the United Nations to investigate the suspicious deaths and serious physical disabilities of Tamil Tiger rebels, reported:

'"The numbers of dead among the category of ex cadres who have served time in Rehabilitation facilities stand at a high 107 within the last 4-5 years and have added weight to the seriousness of the allegation leve[l]led against the Military and Defense establishment of Sri Lanka," says the Tamil Lawyers Forum (TLF) in an open letter to the UN.'[78]

9.2.2 In July 2016, delegates from a UK Home Office Fact Finding (FFM) mission to Sri Lanka met with an official from the Sri Lankan Ministry of Health and Indigenous Medicine, Social Services and Rehabilitation, Probation and Childcare Services and Women's Affairs, who said that, 'There has been a number of deaths of ex-combatants since the war has ended. It was

[76] US Department of State, Country Reports on Human Rights Practices for 2015: Sri Lanka, 13 April 2016, (Section 1. d. Arbitrary Arrest or Detention), http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=252975#wrapper, date accessed 12 January 2017

[77] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 2: Meeting with the Tamil National Alliance (TNA), 11 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

[78] Journalists for Democracy in Sri Lanka, UN urged to probe poisoning of former Tamil fighters, 12 September 2016, http://www.jdslanka.org/index.php/news-features/human-rights/628-un-urged-to-probepoisoning-of-former-tamil-fighters, date accessed 9 March 2017

suspected they may have been injected with some sort of poison whilst in rehabilitation, in addition to being badly tortured.'[79]

9.2.3 However, no further information – for example, a study of this area or objective set of data – to corroborate or substantiate this allegation could be found.

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9.3 Monitoring and surveillance

9.3.1 The Human Rights Watch (HRW) annual report 2016, observed that 'The [Maithripala Sirisena] government quickly abolished surveillance and censorship of media and civil society groups, embarked on constitutional reforms to restrict executive powers, and took steps to restore the independence of the judiciary.' Adding 'In contrast to the combative approach of the Rajapaksa government, it also initiated a new, more open dialogue with the international community, including human rights organisations.'[80]

9.3.2 According to the International Movement Against All Forms of Discrimination and Racism (IMADR), reporting in February 2016:

'Adding to the chilling effect caused by the dispersal of protests, is the use of intimidatory tactics by security forces, particularly in Tamil-majority areas. Events surrounding Remembrance week in May 2015 illustrate this issue. In the North and East, intelligence officers harassed Tamils in their homes and threatened those travelling to events to discourage participation. Intelligence officers also attended many remembrance ceremonies. Due to the latter's role in the abuses perpetrated both during and since the conflict, their attendance alone induces fear. Surveillance – through filming, questioning and recording of participants' details - aggravates the sense of intimidation.'[81]

9.3.3 The Freedom House, Freedom in the World 2016 report, stated that this was, 'particularly in the Tamil-populated north and east, and a growing climate of fear dissuades many individuals from expressing dissent on politics or other sensitive matters.' Adding: 'Former LTTE fighters and their social circles face special scrutiny and are repeatedly questioned by

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[79] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 27: Meeting with Ministry of Health and Indigenous Medicine, Social Services and Rehabilitation, Probation and Childcare Services and Women's Affairs, 14 July 2016, (General questions), https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

[80] The Human Rights Watch (HRW), annual report 2016, 27 January 2016, (Sri Lanka – p. 527), https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf, date accessed 12 January 2017

[81] International Movement Against All Forms of Discrimination and Racism (IMADR), Written statement* submitted by the International Movement Against All Forms of Discrimination and Racism (IMADR), non-governmental organization in special consultative status, 19 February 2016 http://www.ecoi.net/file_upload/1930_1460622684_g1603158.pdf, date accessed 12 January 2017

authorities, infiltrated by intelligence personnel, and encouraged to inform on their associates.'[82]

9.3.4 Bishop Emanuel – a Catholic Bishop whom the Tamil community look to as a leader – informed the UK FFM's team that: 'In addition to the civilian clothed intelligence officers who are often present in the community, it is thought there are deeper levels of monitoring. The authorities will want to have evidence of any plans to reform the LTTE. There is distrust on both sides.'[83]

9.3.5 According to a lawyer who spoke to the FFM team during a meeting about Tamils returning to Sri Lanka, 'it is a given fact they will be questioned and may be monitored, if not at the airport, then when they return to their homes.'[84]

See also Returns.

9.3.6 An August 2016 report published by INFORM stated: 'Complaints of surveillance by state intelligence officers on human rights activists and activism in the North and East are continuing, although with less intensity.'[85]

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9.4 Enforced disappearances

9.4.1 Amnesty International's annual report published 22 February 2017 stated:

'In May [2016], Sri Lanka ratified the International Convention against Enforced Disappearance, but by the end of the year had not passed legislation criminalizing enforced disappearance in domestic law. The Presidential Commission to Investigate into Complaints Regarding Missing Persons concluded in July, having received over 19,000 civilian complaints. However, little progress was made in clarifying the fate of the missing or bringing perpetrators of enforced disappearance to justice. In August, Parliament bypassed public consultation when it adopted an Act establishing the Office on Missing Persons to assist families to trace missing relatives and take on the case load left by the Commission.'[86]

9.4.2 The UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka, 8 July 2016, stated:

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[82] Freedom House, Freedom in the World 2016 - Sri Lanka, 20 June 2016, (Freedom of Expression and Belief), https://freedomhouse.org/report/freedom-world/2016/sri-lanka, date accessed 12 January 2017

[83] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 10: Meeting with Bishop Emanuel, Trincomalee, 16 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 13 January 2017

[84] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 13: Meeting with two lawyers, 21 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 13 January 2017

[85] INFORM, Human Rights Situation in Sri Lanka: August 17, 2015 – August 17, 2016, 26 August 2016, (3. Freedom of Expression, Association and, Assembly), https://ihrdc.files.wordpress.com/2016/12/human-rights-in-sl-one-year-after-parliamentary-elections-inform-18aug20161.pdf, date accessed 13 March 2017

[86] Amnesty International Report 2016/17 - The State of the World's Human Rights - Sri Lanka, (Enforced disappearances), 22 February 2017, https://www.amnesty.org/en/countries/asia-and-the-pacific/sri-lanka/report-sri-lanka/, date accessed 23 February 2017

'Enforced disappearances have been used in a massive and systematic way in Sri Lanka for many decades to suppress political dissent, counter-terrorist activities or in the internal armed conflict…

'Over the years, the Working Group has transmitted communications concerning over 12,000 cases of enforced disappearance to the Government of Sri Lanka, of which 5,750 are still outstanding. A large number of cases before the Working Group concern disappearances that occurred in the late 1980s and early 1990s in relation to the violent targeting of Sinhalese youth suspected of having links to the Janatha Vimukti Peramuna or People's Liberation Front…

'A considerable number of cases also relates to the disappearance of Tamils throughout the lengthy armed conflict between government forces and the Liberation Tigers of Tamil Eelam (LTTE), which ended in May 2009. In addition to these waves of widespread and systematic enforced disappearances, there were also other types of enforced disappearances, such as the so-called "white van" disappearances, disappearances in the context of antiterrorism operations, disappearances conducted for ransom or economic extortion or a combination of all three.'[87]

9.4.3 The Guardian, reported in an article published on 1 October 2015 that: 'Among those who disappeared are an unknown number of activists, journalists and other critics of the authorities who were abducted by unidentified men driving white vans in Colombo, the commercial and cultural capital, during and after the final years of the conflict.'[88]

9.4.4 The UN Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), 16 September 2015, stated:

'According to the 2010 amendment to the Registration of Deaths (Temporary Provisions) Act, families are allowed to register as deceased any person reported missing for over a year "in the course of the civil disturbances that have taken place in Sri Lanka due to terrorist or subversive activities or civil commotion".

'While the Act allows relatives of the disappeared to apply for a death certificate, this does not lead to any recognition that the victim disappeared following unlawful and arbitrary arrest by the security forces, nor does it clarify the fate of the loved ones. Furthermore, witnesses have expressed concern that acceptance of a death certificate may be used to stall any investigations into the person's disappearance.'[89]

9.4.5 The same UN report further stated that:

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[87] UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka, 8 July 2016, (Introduction, Para 8), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/51/Add.2, date accessed 10 March 2017

[88] Guardian, The, Sri Lanka to issue missing certificates to families of civil war disappeared, 1 October 2015, https://www.theguardian.com/world/2015/oct/01/sri-lanka-issues-certificates-families-missing-people-civil-war-un, date accessed 17 January 2017

[89] UN Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), 16 September 2015, (Issuance of death certificates, p95), http://www.refworld.org/docid/55ffb1d04.html, date accessed 9 January 2017

'During the course of its investigation, OISL (OHCHR investigation on Sri Lanka) reviewed reliable information on hundreds of cases of enforced disappearances that occurred within the period of its mandate [Which covered the Lessons Learnt and Reconciliation Commission (LLRC) initial timeframe covered from 21 February 2002 to 19 May 2009. However, its report submitted to the President of Sri Lanka in November 2011, included information dated as late as October 2011.] in various parts of the country, with particular prevalence in the Northern and Eastern Provinces.'[90]

9.4.6 Freedom from Torture (formerly: Medical Foundation for the Care of Victims of Torture), noted in a report, Tainted Peace: Torture in Sri Lanka since May 2009 that:

'The UN Secretary-General's Panel of Experts on Sri Lanka found that immediately after the cessation of hostilities, the Sri Lankan government prioritised security considerations over humanitarian needs and the well-being of IDPs [Internally Displaced Persons]. People fled the conflict areas and surrendered to the Sri Lankan army. The government authorities would strip search virtually all civilians and screen them for suspected LTTE associations. People, including many women and children, would be lured into identifying themselves and surrendering on the promise of vocational training and employment abroad. As the testimony of Freedom from Torture's clients… once identified, suspected LTTE were removed from the IDP camps to separate, often unknown, locations generally referred to as "rehabilitation centres". This "screening process" resulted in cases of executions, disappearances, rape and sexual violence. Thousands of individuals with suspected LTTE ties were detained in extra-legal detention centres, unmonitored and without access to legal counsel or protection agencies, their loved ones not knowing their whereabouts.'[91]

9.4.7 A Tamil family, whose whereabouts were unknown after surrendering to the Sri Lankan military in May 2009, were dropped off by unknown persons in Jaffna in mid-November 2015, after more than six years in custody. Reporting on the story, the Tamil Guardian noted:

'Leader of the Democratic People's Liberation Front (DPLF) Dharmalingam Siddharthan said the wife and three children of LTTE cadre Vinayagam had surrendered to the Sri Lankan military during the final stages of the armed conflict in 2009. Since then, their whereabouts were unknown, with government sources refusing to confirm their surrender. "Vinayagam's wife had surrendered to the armed forces with her children at the end of the war in May 2009, and gone missing ever since and her whereabouts were not known to her relatives for the last six years," said Mr Siddharthan. The family

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[90] UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka, 16 September 2015, (Enforced disappearances, 221), http://www.refworld.org/docid/55ffb1854.html, date accessed 13 January 2017

[91] Freedom from Torture (formerly: Medical Foundation for the Care of Victims of Torture), Tainted Peace: Torture in Sri Lanka since May 2009, 13 August 2015, (Background: Sri Lanka's Civil War and its final phase, p4), https://www.freedomfromtorture.org/sites/default/files/documents/sl_report_a5_-_final-f-b-web.pdf, date accessed 13 January 2017

were finally dropped off at their home in Varani, Jaffna by an unknown group of persons, after more than 6 years in secret military custody.' [92]

For further information on disappearances, see the Report of the UK Home Office's Fact-Finding Mission to Sri Lanka, 11–23 July 2016, in particular meetings with: an official from Rights Now (section 1), a human rights organisation, Jaffna (section 3), the Jaffna Press Club (section 6), Fr. Elil Rajendram SJ (section 8), a women's organisation in Killonochchi (section 9), the Centre for Policy Alternatives (CPA), Colombo (section 20), a UN Senior Human Rights Advisor in Sri Lanka (section 22); and Deputy Foreign Minister, Hon. Harsha de Silva (section 32).

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9.5 "White van" abductions

9.5.1 The International Truth and Justice Project (ITJP), ITJP Submission to the Committee Against Torture, 17 October 2016 noted that Violations continued to be perpetrated under the Sirisena administration including "white van abductions"[93]

9.5.2 The NGO Rights Now, however, informed the UK Home Office's FFM team in July 2016 that: 'A lot of people disappeared in white vans, which are not used now, but the tactics remain the same. The disappearances have been ordered (softly) to stop, so they could come back again.'[94] Equal Ground – a Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning (LGBTIQ) advocacy organisation in Sri Lanka – concurred, informing the FFM team that there were no white van abductions[95].

9.5.3 A representative from the Tamil Civil Society Forum however, informed the FFM team that: 'In March/April [2016], more than 28 people were arrested in connection with the finding of a suicide vest. Men came in a white van and motorbikes and took the people to a CID [Criminal Investigation Department] camp. However, such incidences have generally decreased.'[96]

9.5.4 A Senior Human Rights Advisor for a UN organisation in Sri Lanka, informed the UK FFM delegates at a meeting on 21 July 2016, that:

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[92] Tamil Guardian (Online), Tamil family that 'disappeared' released after 6 years in Sri Lankan custody, 20 November 2015, http://www.tamilguardian.com/article.asp?articleid=16493, date accessed 13 January 2017

[93] International Truth and Justice Project (ITJP), ITJP Submission to the Committee Against Torture, 17 October 2016, (Introduction, p4), http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT_CAT_CSS_LKA_25771_E.pdf, date accessed 13 March 2017

[94] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 1: Meeting with an official from Rights Now, a non-governmental organisation (NGO), 11 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 27 January 2017

[95] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 16: Meeting with Equal Ground (EG), 22 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 27 January 2017

[96] UK Home Office's Fact Finding Mission to Sri Lanka, 11–23 July 2016, Section 5: Meeting with the Tamil Civil Society Forum, 13 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 27 January 2017

'The UN organisation is aware that some NGOs [Non-Governmental Organisations], including Freedom from Torture (FfT) have reported serious torture recently and have contested the statements of the High Commissioner for Human Rights where he mentioned that 'white van abductions' were mostly a thing of the past. The NGOs say that 'white van' abductions are still happening. The UN organisation understands that in Sri Lankan usage the term 'white van abduction' generally refers to instances of enforced disappearences [sic] where persons abducted by unknown perpetrators in unmarked vehicles were most often never seen again. While in the last year there have been cases of police arrests conducted with unmarked vehicles, the detainees promptly appeared in police custody. The High Commissioner statement is to be understood in this sense, (i.e. enforced disappearences [sic] are mostly a thing of the past).'[97]

9.5.5 The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment's May 2016 preliminary findings, noted:

'I have received allegations of recent so-called "white van abductions" – a reference to practices that in the past led to enforced disappearance of persons. The situation today cannot be compared to the past, but the persistent allegations of white van abductions are a reminder that arrests should be conducted transparently and that senior officers must be accountable for them. I raised this issue with the authorities who have said that all arrests are done by police in uniform using officially marked vehicles. The cases that we looked into seem to have resulted in acknowledgement of the detention of the person. However, I intend to continue to look further at the evidence.'[98]

9.5.6 The Tamil Guardian reported on 27 April 2016, that two Tamils in the North-East had been abducted the previous day in a white van. The Guardian recorded:

'George Rajanayakam, 42, and V Michael, 45 were taken near Kattaikadu, Mulliyan, as they were about to go out to sea to fish, when the men came in a "Dolphin" van. "Both of them are family man, and we are not aware of the reasons behind their abduction. They never had any connections with the LTTE" relatives of the men said. Tensions in the Vadamaradchi area remained high on Wednesday according to local residents due to the spate of abductions and arrests by the TID. Former LTTE cadres are reported to be moving away from their homes. Sri Lanka's ministry for rehabilitation has

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[97] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 22: Meeting with a UN Senior Human Rights Advisor in Sri Lanka (A UN organisation), 21 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 27 January 2017

[98] United Nations Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez* on the Official joint visit to Sri Lanka – 29 April to 7 May 2016, 7 May 2016, (Arbitrary arrest and detention), http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943&LangID=E, date accessed 13 March 2017

further summoned former members of the LTTE to Colombo on April 30th, without giving them a precise location.'[99]

9.5.7 The Guardian article further recorded:

'Several arrests and abductions have occurred over recent weeks. The leader of ITAK's [Illankai Tamil Arasu Kadchi, a Sri Lankan political party] youth wing, S Sivakaran was arrested by the TID on Wednesday. The former head of the LTTE's Trincomalee intelligence wing Thalaiarasan was taken into custody in relation to the alleged find of a suicide vest in Chavakachcheri in March. The Island said that 11 Tamils with previous connections to the LTTE had so far been arrested due to the discovery of the vest. Former LTTE commander, Kanathippillai Sivamoorthy, known as Nagulan, was abducted in Jaffna on Tuesday and was found later in custody. His detention came shortly after the arrest of the LTTE cadre Damotharan Jayakanth by Sri Lanka's Terrorist Investigation Department (TID) as well as the former LTTE commander, Ram, who was earlier reported as abducted in the Eastern province but found to have been detained by Sri Lanka's Terrorism Investigation Division (TID).'[100]

9.5.8 A Statement by United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, at the end of his Mission to Sri Lanka, dated 9 February 2016, read:

'The "white van" abductions that operated outside all norms of law and order, and – as intended – instilled fear in the hearts of journalists, human rights defenders and others who dared criticise the Government or State security institutions, are now very seldom reported. The number of torture complaints has been reduced but new cases continue to emerge – as two recent reports, detailing some disturbing alleged cases that occurred in 2015, have shown – and police all too often continue to resort to violence and excessive force.'[101]

9.5.9 A report by the International Truth and Justice Project (ITJP), A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence 2009-2015, published in July 2015, stated that:

'The new Sri Lankan government led by President Sirisena has repeatedly warned people that they do not want the "white van culture" of their predecessors to return. The Prime Minister, Ranil Wickremesinghe, stated in a speech to the Sri Lankan parliament on 3 June 2015 that these abductions

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[99] The Tamil Guardian, Two more white van abductions, 27 April 2016, http://www.tamilguardian.com/content/two-more-white-van-abductions?articleid=17801, date accessed 10 March 2017

[100] The Tamil Guardian, Two more white van abductions, 27 April 2016, http://www.tamilguardian.com/content/two-more-white-van-abductions?articleid=17801, date accessed 10 March 2017

[101] The United Nations Office in Geneva, A Statement by United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, at the end of his Mission to Sri Lanka, dated 9 February 2016, http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/775FCDCB6B14D5F3C1257F5400383767?OpenDocument, date accessed 13 January 2017

were a thing of the past: "Today there are no white vans and as such we are happy that most people can express their views freely".'[102]

9.5.10 The ITJP also stated they had taken 'sworn statements' from 20 victims, who, all but one were subjected to abduction in a 'white van', unauthorised detention, repeated torture and sexual violence. Five of the abductions took place after the August 2015 parliamentary elections; fifteen were after the January 2015 presidential elections.[103]

9.5.11 Looking at the profile of those who were abducted, the ITJP report, added:

'During interrogation by the Sri Lankan security forces several victims were falsely accused of working to restart the LTTE or bringing the country into disrepute by talking about what happened in the war and its aftermath...

'In some cases the interrogators showed the victims print outs of photographs of themselves or people close to them attending recent Tamil diaspora commemorative events abroad...

'Before being abducted, many victims had been involved in a variety of peaceful protests or election activities demanding rights for Tamils. This ranged from attending campaign meetings during presidential and parliamentary elections in 2015 for MP's from the Tamil National Alliance (TNA) and the Tamil National People's Front (TNPF); handing out leaflets; campaigning for the disappeared; to attending memorial events marking the anniversary of the end of the war. The victims said their torturers referenced this legitimate political activity during their detention… Four victims tortured in 2015 had attended a high profile protest by the families of the disappeared in Jaffna in 2013 when the British Prime Minister visited for the Commonwealth Heads of Government Meeting.'[104]

See also Enforced disappearances.

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10. Societal situation

10.1 Land repatriation

10.1.1 The South Asian Terrorism Portal, noted in its Weekly Assessments & Briefings of January 2017, that:

'… President Sirisena handed over 701 acres of land to 700 original land-owners during a ceremony held at Nadeshvar College in Jaffna District on March 12, 2016. Further, on October 31, 2016, the President, handed over

[102] International Truth and Justice Project (ITJP), A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence 2009-2015, July 2015, (2015 Arbitrary Detention, Torture and Sexual Violence Post-election: 8 cases, p34), http://www.itjpsl.com/assets/stoptorture_report_v4_online.pdf, date accessed 13 January 2017

[103] The International Truth and Justice Project (ITJP), Silenced: survivors of torture and sexual violence in 2015, January 2016, (The victims, p. 13), http://www.itjpsl.com/assets/Silenced-jan-2016.pdf, date accessed 13 January 2017

[104] The International Truth and Justice Project (ITJP), Silenced: survivors of torture and sexual violence in 2015, January 2016, (Political Activity, p. 15-17), http://www.itjpsl.com/assets/Silenced-jan-2016.pdf, date accessed 13 January 2017

100 houses newly constructed by the military to internally displaced persons (IDPs) in Jaffna District in Northern Province and released another 454 acres of land that was seized by the military in war time to the original owners. On August 4, 2016, the Cabinet approved SLR 971 million to resettle IDP [Internally Displaced Persons] families. Once again, on November 10, 2016, the Cabinet approved another proposal to allocate SLR 88 million to purchase more lands in the former war-torn North to resettle the remaining 462 IDP families. Three decades of civil war between Government Forces and the Liberation Tigers of Tamil Eelam (LTTE) had ended in May 2009, leaving behind an estimated 300,000 IDPs in the North.'[105]

10.1.2 The Oakland Institute report, The Long Shadow of War, The Struggle For Justice in Postwar Sri Lanka, published in 2015, stated:

'One major issue is the continued displacement of people from their lands and homes as a result of persistent military occupation of the Northern and Eastern Provinces.

'Thousands of Tamils are still internally displaced and remain without land or livelihoods. For those who have been "resettled" through government schemes, the process has often taken place without voluntary or fully informed settlement choice and without adequate infrastructure in place for rebuilding their lives.

'Sri Lanka's army still occupies "high security zones" in the North and East of the country. In 2014, at least 160,000 soldiers, almost entirely Sinhalese, were estimated to be stationed in the North. With the Northern Province's population estimated at just over one million in 2012, this yields a ratio of one army member for every six civilians, despite the official end of hostilities six years ago.

'This military occupation is not about ensuring security. The army has expanded non-military activities and is engaged in large-scale property development, construction projects, and business ventures such as travel agencies, farming, holiday resorts, restaurants, and innumerable cafes that dot the highways in the Northern and Eastern Provinces. The army officially runs luxury resorts and golf courses that have been erected on land seized from now–internally displaced peoples. Tourists can book holidays in luxury beach resorts by directly calling reservation numbers at the Ministry of Defence. These resorts and businesses are located on lands that were previously home to the local Tamil population, who were displaced by the war. They see no sign of return, despite numerous demands and petitions.'[106]

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[105] South Asian Terrorism Portal (SATP), South Asia Intelligence Review, Weekly Assessments & Briefings Volume 15, No. 28, January 16, 2017, http://www.satp.org/satporgtp/sair/Archives/sair15/15_29.htm, date accessed 16 January 2017

[106] The Oakland Institute, The Long Shadow of War, The Struggle For Justice in Postwar Sri Lanka,2015, (Executive Summary, p3), http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_The_Long_Shadow_of_War_0.pdf, date accessed 13 January 2017

10.1.3 The UN Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), published on 16 September 2015, stated: 'The military has retained a heavy presence and a system of checks and surveillance in the North and East, and it continued to occupy substantial tracts of civilian land, further complicating resettlement.'[107]

10.1.4 The International Crisis Group (ICG), Sri Lanka Between Elections, Asia Report N°272, 12 August 2015, state: 'In March-April [2015] releases, the government returned some 1,000 acres of military- occupied land to owners displaced for decades from homes in the Valikammam area of northern Jaffna district. It was undeveloped, with neither original houses nor new military camps or other government buildings; returning the remaining thousands of acres on which the military built camps or hotels will be harder.'[108]

10.1.5 The UN Human Rights Council, Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, 28 September 2015, stated: 'One major continuing problem is the military occupation of private land, although the Government has proceeded with some land releases in Thellipallai and Kopai in the North and in Sampur in the East. Land issues have been further complicated by secondary occupation by civilians; loss, destruction and damage to land documents; competing claims; landlessness; and un-regularized land claims. Care must also be taken to ensure that land distribution does not exacerbate existing intra- and inter-community tensions, since land disputes have become increasingly politicized and ethnicized in return areas.' [109]

For further information on land issues, see the Report of the UK Home Office's Fact-Finding Mission to Sri Lanka, 11–23 July 2016, in particular meetings with: the Tamil Civil Society Forum (section 5), an INGO, Colombo (section 18), an INGO, Jaffna (section 19), the Security Forces (SF) Commander for Jaffna (section 26), the Security Forces (SF) Commander for Killinochchi (section 28); and Naseer Ahamed, Chief Minister of the Eastern Province (section 31).

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10.2 Education and Employment

10.2.1 The USSD Report 2016 on Sri Lanka, published on 3 March 2017, stated:

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[107] UN Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), 16 September 2015, A/HRC/30/CRP.2, (III. Contextual background, May 2009 – November 2011: Post-armed conflict period, (p21), http://www.refworld.org/topic,50ffbce510,50ffbce525,55ffb1d04,0,UNHRC,,LKA.html, date accessed 9 January 2017

[108] International Crisis Group, Sri Lanka Between Elections, Asia Report N°272, 12 August 2015, (IV. Initial Steps on Reconciliation, p16), http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/272-sri-lanka-between-elections.pdf, date accessed 13 January 2017

[109] UN Human Rights Council, Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, 28 September 2015, A/HRC/30/61, (May 2009 – November 2011: III. Human rights and related developments, p5), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_61_ENG.docx , date accessed 13 January 2017

'Both local and Indian origin Tamils maintained they suffered longstanding, systematic discrimination in university education, government employment, housing, health services, language laws, and procedures for naturalization of noncitizens. Tamils throughout the country, but especially in the north and east, reported security forces regularly monitored or harassed members of their community, especially young and middle-aged Tamil men.' [110]

10.2.2 In July 2016, the UK Home Office's FFM team met with representatives from the human rights organisation in Colombo, who observed that Rehabilitees faced harassment. The police visited them in their homes and their places of work to question them, making it very difficult for them to get employment[111].

10.2.3 Women In Need, based in Jaffna who commented that

'A large number of women work in the government sector, which is secure. However, private sector jobs are not so secure. It is easy to get jobs in insurance or leasing offices but there are allegations of sexual abuse. Some women do not say if they have issues/problems. WIN has conducted awareness programmes and there have been improvements. Government jobs offer equal pay for men and women whereas private sector jobs do not. Men who work in shops receive higher wages than women although some employers offer state benefits (Employees Provident Fund).'[112]

10.2.4 IRIN news reported on 18 January 2016, that:

'Almost seven years after the end of Sri Lanka's decades-long civil war, the majority of former Tamil Tiger rebels are struggling to find jobs despite billions of dollars of extra investment in their regions…

'There are around 12,000 former combatants, mostly in the Northern Province, who have been released after undergoing rehabilitation programmes, according to the Commissioner General of Rehabilitation. Only around 3,000 have gained permanent employment, most in the civil defence force under the police department.'[113]

See also Rehabilitation of former LTTE combatants.

10.2.5 The IRIN article further noted:

'Two of the worst hit districts during the conflict, Mullaitivu and Kilinochchi in the Northern Province, have been plagued by high unemployment since the fighting ended in 2009. Kilinochchi suffers from the highest national

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[110] US State Department's 2016 Country Report on Human Rights Practices (USSD Report 2016), Sri Lanka, published on 3 March 2017, (Section 6. National/Racial/Ethnic Minorities), https://www.state.gov/documents/organization/265760.pdf, date accessed 6 March 2017

[111] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 15: Meeting with human rights organisation, 22 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

[112] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 4: Meeting with Women In Need (WIN), Jaffna, 13 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

[113] IRIN news, Ex-Tamil Tigers go jobless in Sri Lanka, 18 January 2016, http://www.irinnews.org/report/102368/ex-tamil-tigers-go-jobless-sri-lanka, date accessed 12 January 2017

unemployment rate at 7.6 percent, compared to the national average of 4.3 percent, according to national the Department of Census and Statistics.

'Officially, the unemployment rate is 5.3 percent in Northern Province and 4.9 percent in Eastern Province, another former Tamil Tiger heartland that is struggling to recover from the war. True unemployment rates in both provinces are likely far higher.

'Even the department itself warns that the numbers are untrustworthy. "These figures are to be treated with caution as the corresponding CV (coefficient of variation) values are high," it said in a labour force survey published last September [2015].'[114]

10.2.6 A paper from the International Journal of Scientific Research and Innovative Technology, in December 2015 recorded:

'In order to support the reintegrated person's livelihood matters, the government provided facilities for rehabilitated cadres to apply for loans from the "State Banks" to finance their self employment projects. According to that States Banks provided Rs.250,000 as loans at mere 4% annual interest to rehabilitated ex-cadres… After submitting their project proposals the rehabilitated ex-combatants could apply for this loan.'[115]

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10.3 Health care

10.3.1 The UK Home Office's FFM Team met with an international non-governmental organisation (INGO), in Jaffna, on 13 July 2016, who informed them that:

'Healthcare is free, including surgery and medication. Services are improving in Jaffna but in rural areas they (the authorities) are still working on improving healthcare provision. The challenges people face are related to lack of resources, not always easy access; many specialist positions in health sector remaining vacant, and in some instances the language barrier. But the situation is not critical.

'The Ministry of Health runs programmes to support healthcare needs and has specialist departments, such as a hospital for cancer patients. There is paediatric and anti-natal care at divisional secretariat level. Family planning is available and midwives provide home visits.

'Mental health problems carry stigma at the community level. Families try to hide it from other people and will take their family member to a local healer to get rid of what they consider is 'the devil'. There are mental health facilities in district state hospitals and the INGO is currently supporting the

[114] IRIN news, Ex-Tamil Tigers go jobless in Sri Lanka, 18 January 2016, http://www.irinnews.org/report/102368/ex-tamil-tigers-go-jobless-sri-lanka, date accessed 12 January 2017

[115] International Journal of Scientific Research and Innovative Technology ISSN: 2313-3759 Vol. 2 No. 12; December 2015 (Rehabilitation of Ex-LTTE cadres), http://www.ijsrit.com/uploaded_all_files/1898033422_m2.pdf, date accessed 17 January 2017

mental health units in Kilinochchi and Mullativu with a small project to enhance awareness and referrals on this issue.'[116]

10.3.2 The Ministry of Health and Indigenous Medicine, Social Services and Rehabilitation, Probation and Childcare Services and Women's Affairs informed the UK FFM Team that:

'There are 110 hospitals in the north, but 30 of these have no doctors so it is not possible to provide 'quality' health services due to the human resource issue. These hospitals function for only a few hours a day when they are staffed by Ministry of Health (MoH) doctors from the main hospitals. Some doctors from the primary hospitals will spend half the day in one hospital and the second half of the day in their 'own hospital'. There are staff shortages in almost every category of staff, with only about 58% of the approved number of people in post…

'Around Jaffna, there are many small islands which are a problem to get to. The MoH [Ministry of Health] in Jaffna provides transport to Colombo for patients living in the north who need more specialist care, as there are a lack of specialist doctors and facilities in the north. For example, there are two cardiologists in Jaffna. Healthcare is better than it was 3 – 4 years ago but there are things that still need to be developed, especially in the rural areas. Villages do generally have midwives but service provision for general medical care is a problem…

'Medication and health services are free of charge in government hospitals. Sometimes for certain conditions, for example cancer treatment, dialysis, and chronic kidney issues, patients are asked to buy medicine outside.

'Obtaining basic medication is not a problem unless there is a country wide problem.

'Radiotherapy and immunotherapy, some drugs and injections are not available in government institutions. The supply is there, but it is very limited. Once the MoH finish the supply of a particular drug, it then asks the government to buy in the next batch.

'There are also some long queues for procedures, for example cardiac surgery. There is a cancer unit in Jaffna district.

'There is no government health insurance system. Some private companies do offer health insurance, but only a very small number of the population have this and it doesn't pay out very much. Poor people are helpless. A social services department is there but there is no mechanism to help provide medicines for these people.

'In Government hospitals surgeries and medication are completely free.

'Government hospitals provide the treatment but the family are expected to 'care' for the patient.'[117]

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[116] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 19: Meeting with an INGO, Jaffna,13 July 2016, (Healthcare), https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

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11. Women

11.1 General situation

11.1.1 Sri Lanka became signatories to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 17 July 1980 and ratified it on 5 October 1981[118].

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

'Women in the North and East continue to suffer from the scars of the conflict, as well as the insecurity that resulted from the subsequent militarization. In the last stages of the war and its aftermath, human rights abuses against the civilian population by both sides to the conflict were rife, including sexual and gender-based violence. The climate of impunity and the additional insecurity created by the militarization have meant that women are living with multiple challenges that threaten their freedom, dignity and security on a daily basis. While the incidence of sexual assaults by military personnel is said to have decreased with the downsizing of the army in the North and East, a climate of fear remains among the Tamil women in an area where the military presence has continued.'[119]

11.1.3 An August 2015 City University of New York Colin Powell School report noted that:

'Sexual harassment by the military remains a daily reality for Tamil women, particularly young women, who must engage with state forces for basic activities ranging from purchasing vegetables to school registration. In areas with little electricity, many women's only opportunity to charge their cell phones is to visit the nearest military camp. Some, one rights activist notes, "are asked for sexual favors in exchange for the use of their electricity." Women's lives, and daily mobility, are shaped by the constant constraint by the presence of military camps.'[120]

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[117] UK Home Office's Fact Finding Mission to Sri Lanka, 11– 23 July 2016, Section 27: Meeting with Ministry of Health and Indigenous Medicine, Social Services and Rehabilitation, Probation and Childcare Services and Women's Affairs, 14 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

[118] Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights Bodies: Ratification Status for CEDAW - Convention on the Elimination of All Forms of Discrimination against Women, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN, date accessed 13 March 2017

[119] The Human Rights Council, The UN Human Rights Council, Report of the Special Rapporteur on minority issues on her mission to Sri Lanka - Note by the Secretariat, 31 January 2017, (Specific groups of concern - B. Minority women, Para 40, p12), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/53/Add.3, date accessed 3 March 2017

[120] City University of New York Colin Powell School, Tamil Women in Post-War Sri Lanka The forever victims? 28 August 2015, (Section 5, Conclusions, p9), http://sangam.org/wp-

11.1.4 The report further added:

'Tamil women in Northern Sri Lanka still face the risk of rape and harassment by the security forces present throughout the region, but their lives are even more negatively impacted by the climate of fear and by a worrying uptick in violence against women within the Tamil community. The ever-present threat of violence by the military has led women to lead tightly circumscribed lives, limiting their daily activities in order to minimize their risk of sexual assault. Their reduced participation in public life keeps them in the home, where they are increasingly vulnerable to violence at the hands of the men in their lives, many of whom are also struggling with the after-effects of wartime trauma.' [121]

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11.2 Female-headed households (FHH)

11.2.1 The UN Human Rights Council report of January 2017 observed that:

'According to the latest census, approximately one in four households in Sri Lanka are headed by females, and most are found in the North and East. The Special Rapporteur was told that this status is accompanied by particular vulnerabilities and social stigma that make basic survival difficult and exposes the women to further exploitation. The lack of income-generation and employment opportunities combined with high levels of debt make them vulnerable to sexual exploitation by community leaders, family members as well as the military. Women who are displaced also face particular challenges, such as claiming land belonging to their disappeared husbands, as deeds are normally in the name of the male head of household.'[122]

11.2.2 Further adding:

'War widows and women family members of the disappeared who search for truth, justice and accountability, as well as women activists who advocate on their behalf also face particular risks. There are instances of wives and mothers of the disappeared being asked for money or sexual services in return for information. Worrying allegations of intimidation and harassment by the Criminal Investigation Division were also made, particularly in relation to former LTTE combatants. These women continue to be under heavy surveillance even today, and there were allegations of late-night phone calls and "visits". Many are unable to marry or have a family because of the social stigma and the constant harassment. Once they have undergone the official rehabilitation programme, there is no follow-up on their reintegration into society. Another concern was the vulnerable situation of women who are

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content/uploads/2015/09/8-28-15-nimmi_whitepaper_NE.pdf, date accessed 7 March 2017

[121] City University of New York Colin Powell School, Tamil Women in Post-War Sri Lanka The forever victims? 28 August 2015, (Section 5, Conclusions, p19), http://sangam.org/wp-content/uploads/2015/09/8-28-15-nimmi_whitepaper_NE.pdf, date accessed 7 March 2017

[122] The Human Rights Council, The UN Human Rights Council, Report of the Special Rapporteur on minority issues on her mission to Sri Lanka - Note by the Secretariat, 31 January 2017, (Minority women, Para 48, p12), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/53/Add.3, date accessed 3 March 2017

given vocational training and employment by the Civilian Security Department of the military in isolated conditions under the direct authority of military personnel.'[123]

11.2.3 According to the Australian Department of Foreign Affairs and Trade (DFAT) Country Information Report Sri Lanka, 24 January 2017:

'There are approximately 90,000 female-headed households in the north and east, many of which are headed by women who were widowed during the conflict. Women in these situations face many challenges, including a lack of physical security for their family, a lack of permanent housing and economic opportunities and difficulties accessing health services. Women who are forced to seek employment outside the home face societal discrimination in Tamil and Muslim communities, who view these women with suspicion.'[124]

11.2.4 A representative from an international non-governmental organisation (INGO) based in Jaffna, informed the delegates from the UK FFM on 13 July 2016 that, 'According to Northern Provincial Council statistics there are around 47,000 women headed families in Northern Province.'[125]

For further information on female headed households , see the Report of the UK Home Office's Fact-Finding Mission to Sri Lanka, 11–23 July 2016, in particular meetings with: an INGO, Colombo (section 18), an INGO, Jaffna (section 19); and a UN Senior Human Rights Advisor in Sri Lanka (section 22).

11.2.5 The FOKUS Women, Shadow Report to the United Nations Committee on the Elimination of Discrimination Against Women, April 2016, observed:

'FHH affected by the war predominantly speak Tamil, the minority language. The study by FOKUS WOMEN on language demonstrates that FHH are unable to access the criminal justice system due to the language barrier. Experiences of such discrimination of 15 FHH from the Northern and Eastern Provinces have been studied for this report. These FHH report that at the police stations, including the Police Bureaus for Prevention of Abuse of Children and Women; at Prisons; during court proceedings including accessing translations provided by male translators; and in accessing state funded medical services that FHH experience discrimination. Due to lack of

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[123] The Office of the United Nations High Commissioner for Human Rights (OHCHR), UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, (Para 49, p12), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_CRP._4_AV.docx, date accessed 1 March 2017

[124] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 3.74), 24 January 2017, date accessed 21 January 2017. Available on request.

[125] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 19. Meeting with an INGO, Jaffna,13 July 2016 (Female Headed Households), https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 27 January 2017

information in the Tamil language Tamil FHH are made vulnerable and are unable to seek justice.'[126]

11.2.6 The Association des étudiants tamouls de France, a non-governmental organization in special consultative status, Written statement submitted to the UN Human Rights Council: State-sponsored violence against Eelam Tamil women in North, 3 June 2016, stated:

'With regard to missing relatives, the state has attempted to provide some relief to displaced women, and has responded to appeals for justice against the violation of human rights of the Tamil people by its own institutions. The courts and other mechanisms of the state, such as the Human Rights Commission, the Commissions on Disappearances and the Anti Harassment Committee, have provided a limited space for Tamil citizens to contest violations of their rights by the armed forces and police, and obtain some relief and redress.'[127]

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11.3 Allegations of sexual violence by security forces

11.3.1 In a Public Submission to the Committee on the Elimination of Discrimination against Women for its examination of Sri Lanka in February 2017, the International Truth and Justice (ITJP) Project, Submission to CEDAW, 20 February 2017, it recorded that, '… the ITJP has sworn statements from 55 women describing torture and horrific assaults while held in state custody, 48 of them detained under the Government of former President Rajapaksa and 71 of them under the new Government of President, Maithripala Sirisena.'[128]

11.3.2 The Submission adds that: 'Since he assumed power two years ago, President Sirisena and his government have failed in their duty to investigate credible allegations, inter alia from the UN, that there was a deliberate policy of using sexual violence to inflict torture.'[129]

11.3.3 The DFAT report noted 'There have been a number of allegations of sexual assaults and rape attributed to the Sri Lankan military in the north and east. While the military has been blamed for taking advantage of economically vulnerable women, credible NGOs report that some women, particularly war-

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[126] FOKUS Women, Shadow Report to the United Nations Committee on the Elimination of Discrimination Against Women, April 2016, (Specific groups of FHH: B. Tamil FHH, p15), http://www.ecoi.net/file_upload/1930_1463657465_int-cedaw-ngo-lka-23894-e.pdf, date accessed 13 March 2017

[127] Association des étudiants tamouls de France, a non-governmental organization in special consultative status, Written statement submitted to the UN Human Rights Council: State-sponsored violence against Eelam Tamil women in North, 3 June 2016, (State-sponsored violence against Eelam Tamil women in North), http://www.ecoi.net/file_upload/1930_1470904072_g1611129.pdf, date accessed 13 March 2017

[128] International Truth and Justice Project, Submission to CEDAW, 20 February 2017, (Summary), http://www.itjpsl.com/assets/Part-1-ITJP-Public-Submission-to-CEDAW-2017.pdf, date accessed 7 March 2017

[129] International Truth and Justice Project, Submission to CEDAW, 20 February 2017, (Summary), http://www.itjpsl.com/assets/Part-1-ITJP-Public-Submission-to-CEDAW-2017.pdf, date accessed 7 March 2017

widows, may also have been forced into prostitution as an economic necessity.'[130]

11.3.4 The Human Rights Watch 2017 annual report recorded that: 'Allegations of sexual and other violence committed against women during the civil war are expected to be addressed through the transitional justice mechanisms, although there are concerns that many women will be reluctant to come forward absent an independent victim and witness protection program.'[131]

11.3.5 The UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, stated:

'In October [2016], four soldiers were found guilty of sexually assaulting two Tamil women in Vishvamadu in 2010. However, such convictions are rare. During his visit to Sri Lanka the High Commissioner requested a progress update on the 39 sexual violence cases involving military that the Government had acknowledged to the Human Rights Committee in 2014.'[132]

11.3.6 The Freedom House report, Freedom in the World 2016, reported that:

'The presence of the army in the north and east has increased the risk of harassment and sexual abuse for female civilians in those areas. Although women have equal rights under civil and criminal law, matters related to the family – including marriage, divorce, child custody, and inheritance – are adjudicated under the customary law of each ethnic or religious group, and the application of these laws sometimes results in discrimination against women.'[133]

See also Enforced disappearances

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11.4 Domestic violence

11.4.1 The UN Committee on the Elimination of Discrimination against Women (CEDAW) in its 'Concluding observations on the eighth periodic report of Sri Lanka', dated 3 March 2017, commented that the Committee welcomed the

[130] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 3.75), 24 January 2017, date accessed 21 January 2017. Available on request.
[131] The Human Rights Watch (HRW), annual report 2017, 12 January 2017, (Women's Rights), https://www.hrw.org/world-report/2017/country-chapters/sri-lanka, date accessed 13 January 2017
[132] The Office of the United Nations High Commissioner for Human Rights (OHCHR), UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, (Para 19, p6), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_CRP._4_AV.docx, date accessed 1 March 2017
[133] Freedom House, Freedom in the World 2016 - Sri Lanka, 20 June 2016, (Personal Autonomy and Individual Rights), https://freedomhouse.org/report/freedom-world/2016/sri-lanka, date accessed 12 January 2017

'… National Plan of Action for addressing Sexual and Gender Based Violence (2016-2020); High-level recommendations to criminalize marital rape in all circumstances where consent of a spouse is absent, regardless of the degree of violence it entails; and the proposed amendments to strengthen the Prevention of Domestic Violence Act, including by removing discriminatory provisions from the Evidence Ordinance on the credibility of women's testimony. However, the Committee remains concerned at the persistence of patriarchal attitudes and discriminatory stereotypes that condone a culture of impunity for acts of sexual and gender based violence.' [134]

11.4.2 The Committee did note its concern however, on the following points:

- The high prevalence of gender-based violence against women in the State party and that cases of violence against women are underreported due to a lack of adequate legislation, women's limited access to justice for reasons including fear of reprisals, limited trust in the police and judiciary, extreme delays in the investigation and adjudication of such cases, arbitrary outcomes, and very low conviction rates;
- That in cases of domestic violence, victims are required to participate in mediation as a requisite for pursuing a case in court, which results in women withdrawing their complaints due to intimidation; and,
- The lack of systematic data collection on the investigation, prosecution and sentencing of acts of gender-based violence against women, limited access for women and girls to victim assistance and protection, and the number of shelters in the State party[135].

11.4.3 The US State Department's 2016 Country Report on Human Rights Practices (USSD Report 2016), Sri Lanka, published on 3 March 2017, observed that:

'Services to assist survivors of rape and domestic violence, such as crisis centers, legal aid, and counseling, were generally scarce nationwide due to a lack of funding. Language barriers between service providers and victims also were reported in the north and east, where Tamil speaking victims lacked access to Tamil speaking service providers. There was one government established shelter for victims of domestic violence. The Ministry of Health, in partnership with nongovernmental organizations (NGOs), maintained hospital based centers to provide medical assistance to those

[134] United Nations, 'Committee on the Elimination of Discrimination against Women Concluding observations on the eighth periodic report of Sri Lanka, 3 March 2017, (Stereotypes and gender-based violence against women, Para 22, p6), http://www.ohchr.org/EN/countries/AsiaRegion/Pages/LKIndex.aspx, date accessed 8 March 2017

[135] The Office of the United Nations High Commissioner for Human Rights (OHCHR), UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Promoting reconciliation, accountability and human rights in Sri Lanka, 28 June 2016, (Para 19, p6), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_CRP._4_AV.docx, date accessed 1 March 2017

requiring attention for sexual assault related injuries before referral to legal and psychosocial services.' [136]

11.4.4 A representative from Women In Need (WIN), Jaffna, informed the UK Home Office's FFM team in July 2016 that: 'Women are more at risk of domestic violence and sexual harassment if they have little or no income. Women in low wage jobs such as insurance or leasing companies are more likely to be harassed at work and are easy to target for sexual violence… More than 300 women per year seek help from the organisation in Jaffna on issues including domestic violence and sexual harassment.' Adding that: 'WIN has no shelters but there is one shelter in the Jaffna area that WIN has connections with.'[137]

11.4.5 Women In Need in Colombo informed the FFM team during a meeting on 22 July 2016 that they provided 'Two shelters – one in Matara district on the outskirts of Colombo and one in Colombo.'[138]

11.4.6 The DFAT report stated:

'Women IDPs [Internal Displaced Persons] who have returned to their place of origin claim that corrupt police officers accept bribes to turn a blind eye to domestic violence. Many IDP returnee women also find that language is a barrier to accessing support as they speak Tamil and cannot communicate effectively with the mainly Sinhala-speaking police. A recent report found that there are few female officers, none of whom speak Tamil and it is difficult to find female translators. Staff answering the police hotline mostly speak Sinhala. There is only one safe house for women in the north and east, located in Jaffna.'[139]

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12. Returns

12.1 Stop and watch lists

12.1.1 The Department of Foreign Affairs and Trade (DFAT) Country Information Report Sri Lanka, 24 January 2017, observed:

'"Stop" lists include names of those individuals that have an extant court order, arrest warrant or order to impound their Sri Lankan passport. "Watch" lists include names of those individuals that the Sri Lankan security services

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[136] US State Department's 2016 Country Report on Human Rights Practices (USSD Report 2016), Sri Lanka, published on 3 March 2017, (Section 6.Discrimination, Societal Abuses, and Trafficking in Persons – Women), https://www.state.gov/documents/organization/265760.pdf, date accessed 6 March 2017

[137] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 4: Meeting with Women In Need (WIN), Jaffna, 13 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 27 January 2017

[138] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 17: Meeting with Women in Need (WIN), Colombo, 22 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 27 January 2017

[139] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 3.76), 24 January 2017, date accessed 21 January 2017. Available on request.

consider to be of interest, including due to separatist or criminal activities. Those on a watch list are not likely to be detained, although there have been some media reports claiming that individuals, mostly Tamils, travelling from the United Kingdom have been detained on arrival at the airport. DFAT has not been able to verify these reports but notes that those on a watch list are likely to be monitored.'[140]

12.1.2 In July 2016, an anonymous source informed the UK Home Office's FFM Team during its mission to Sri Lanka that:

'The airport maintains a list of persons-of-interest by law enforcement agencies that have violated Sri Lankan law. The list is updated regularly. There is a requirement at the borders to facilitate security agencies.

'The airport security does not detain Sri Lankan nationals, even if they are in violation of immigration laws. They are passed over to law enforcement. The airport maintains a system capable of checking documents of people that cross the border. Anyone leaving Sri Lanka must have a valid passport. All passengers are mandated to pass through immigration. There is a possibility for people to get past immigration..., using forged documents exchanged after the immigration [clearance process].'[141]

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12.2 Treatment on arrival

12.2.1 The People for Equality and Relief in Lanka (PEARL), a non-profit organisation led by human rights activists concerned about the situation in Sri Lanka, recorded in its report, Withering Hopes: Historic window of opportunity for reconciliation will close if Sri Lanka fails to act on accountability and militarization, April 2016:

'Tamils returning from abroad, particularly those returning from working in the Middle East and deported from other places, continue to be questioned and sometimes detained on arrival. At least 19 Tamils returning from abroad were arrested in 2015. In January 2016, a Tamil journalist returning from Australia was arrested and detained. Tamils deported from countries such as Turkey and Australia have also been arrested upon arrival. There is at least one reported case of abduction and murder of a Tamil who returned from Saudi Arabia in 2015.'[142]

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[140] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 3.29), 24 January 2017, date accessed 21 January 2017. Available on request.

[141] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 34: Meeting with an anonymous source at Bandaranaike International Airport, 21 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

[142] People for Equality and Relief in Lanka (PEARL), Withering Hopes: Historic window of opportunity for reconciliation will close if Sri Lanka fails to act on accountability and militarization, April 2016, B. Unlawful Arrests and Detentions of Returning Tamils, http://pearlaction.org/wp-content/uploads/2016/04/Withering-Hopes-PEARL.pdf, date accessed 9 March 2017

12.2.2 In June 2016 a British man's family and human rights lawyers claimed he had been detained and tortured in Sri Lanka after travelling there to get married, his. The Guardian reported that:

'… his family claim two men arrived on motorbikes, beat him up in front of his mother and older sister and then bundled him into a van. He was then taken to Jaffna prison. He was located several days later, after his family made extensive enquiries about his whereabouts, with injuries consistent with torture, lawyers said. The family engaged Anton Punethayanagam, a human rights lawyer, to represent him. enukaruban, who has lived in the UK for 16 years, appeared at Jaffna magistrates court charged with assault, but there was no victim of the alleged assault in court and details of how, when and where the assault had taken place were sketchy. Renukaruban's family believe the real reason why he was arrested and detained is that he was previously involved with LTTE.'[143]

12.2.3 However, CPIT was unable to find information which corroborated the claims of LTTE membership as the reason for arrest.

12.2.4 In May 2016 12 Sri Lankan asylum seekers deported from Australia's Cocos Islands were arrested and taken into custody of the criminal investigation department of the Sri Lanka police in Colombo. The Guardian reported:

'The group, which included a woman, one child, and one infant, were flown back on a secret charter flight from the islands overnight on Thursday. The Australian government has declined to comment on the arrival of the asylum-seeker boat at Cocos, or the group's rapid forced removal, saying only "the government does not comment on on-water matters".'[144]

12.2.5 The Guardian further added: 'Typically, asylum seekers who are returned to Sri Lanka are held in police custody or Negombo prison. They face a magistrate's court and are usually fined for the offence of illegally leaving the country. Some spend weeks, or even months in jail, and the fines can be up to 100,000 rupees ($A930).'[145]

12.2.6 However, it appears as though these arrests were under the immigration acts (for illegal departure).

12.2.7 The DFAT Report on Sri Lanka, dated 24 January 2017, observed:

'Most Sri Lankan returnees, including those from Australia, are questioned (usually at the airport) upon return and, where an illegal departure from Sri Lanka is suspected, they can be charged under the I&E [Immigrants and Emigrants Act 1949] Act. DFAT understands that in most cases, these

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[143] The Guardian, British Tamil 'tortured and detained' during Sri Lanka wedding trip, 11 June 2016, https://www.theguardian.com/law/2016/jun/11/sri-lanka-british-tamil-velauthapillai-renukaruban-tortured-wedding, date accessed 9 March 2017

[144] The Guardian, Asylum seekers deported from Cocos Islands arrested by Sri Lankan police, 7 May 2016, https://www.theguardian.com/australia-news/2016/may/07/asylum-seekers-deported-from-cocos-islands-arrested-by-sri-lankan-police, date accessed 9 March 2017

[145] The Guardian, Asylum seekers deported from Cocos Islands arrested by Sri Lankan police, 7 May 2016, https://www.theguardian.com/australia-news/2016/may/07/asylum-seekers-deported-from-cocos-islands-arrested-by-sri-lankan-police, date accessed 9 March 2017

individuals have been arrested by the police at Colombo's Bandaranaike International Airport. As part of this process, most returnees will have their fingerprints taken and be photographed. At the earliest available opportunity after investigations are completed, the individual would be transported by police to the closest Magistrate's Court, after which custody and responsibility for the individual shifts to the courts or prison services. The Magistrate then makes a determination as to the next steps for each individual.'[146]

12.2.8 The DFAT report further noted: 'Those who have been arrested can remain in police custody at the Criminal Investigation Department's Airport Office for up to 24 hours after arrival. Should a magistrate not be available before this time – for example, because of a weekend or public holiday – those charged may be held at a nearby prison.'[147]

12.2.9 A Written statement submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status to the UN Human rights council, dated 4 September 2015, stated that: 'Returning Tamils from abroad continue being arrested at the airport. The surveillance of the civil society in the North and East is remaining high.'[148]

12.2.10 The Immigration and Refugee Board of Canada reported in February 2015 that: 'Sources report that individuals returning from abroad are particularly subject to screening.'[149] A July 2015 International Truth & Justice Project (ITJP) Sri Lanka report on Sri Lanka's Survivors of Torture and Sexual Violence 2009-2015 stated that: 'A security force insider testified since the presidential election in 2015 that military intelligence officials from Joseph Camp were actively looking for any Tamils returning home from abroad in order to interrogate them. The witness stated that the intention was to abduct, detain and torture them.'[150]

12.2.11 In May 2015 it was reported that at least 16 Tamil men from the Batticaloa district had been arrested at Katunayake International Airport over a period of around 100 days after returning from working abroad at Middle Eastern

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[146] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 5.21), 24 January 2017, date accessed 21 January 2017. Available on request.

[147] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 5.21), 24 January 2017, date accessed 21 January 2017. Available on request.

[148] Society for Threatened Peoples, Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status to the UN Human rights council, Ongoing oppression of minorities in Sri Lanka, 4 September 2015, (Ongoing oppression of minorities in Sri Lanka - II. Situation of Tamils in 2015), http://www.ecoi.net/file_upload/1930_1443015511_g1520006.pdf, date accessed 13 January 2017

[149] Immigration and Refugee Board of Canada, Sri Lanka: Treatment of suspected members or supporters of the Liberation Tigers of Tamil Eelam (LTTE), including information about how many are in detention; whether the government continues to screen Tamils in an attempt to identify LTTE suspects (2011-January 2015) [LKA105041.E], 11 February 2015, http://www.ecoi.net/local_link/297674/420049_en.html, date accessed 13 January 2017

[150] International Truth and Justice Project (ITJP), A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence 2009-2015, July 2015, (The Extensive Use of Informers p.103), http://www.itjpsl.com/assets/stoptorture_report_v4_online.pdf, date accessed 13 January 2017

countries. TamilNet reported that, 'Almost all the victims were ex-LTTE members who had undergone SL military 'rehabilitation' and released earlier.' Adding that: 'Tamil National Alliance (TNA) Parliamentarian Pon Selvarasa told journalists in Batticaloa that he had requested Sri Lankan Minister of Public Order to release all the Tamils who have been subjected to long-term detention of the TID [Terrorist Investigation Department].'[151]

12.2.12 The International Crisis Group noted in an August 2015 report that: 'Tamils returning from abroad continue to be arrested under the PTA [Prevention of Terrorism Act] on suspicion of old LTTE involvement. According to some reports, after police detention, many are sent to the military-run rehabilitation program. Tamil politicians and activists allege that secret detention centres established by the old government continue, though officials deny this.'[152]

See also Prevention of Terrorism Act.

12.2.13 In an August 2015 study of 148 Sri Lankan torture cases perpetrated since the end of the Sri Lankan civil war in May 2009, Freedom from Torture recorded that 55 of the 148 cases (37%) reviewed in the study were reportedly detained and tortured after returning from the UK between 2009 and 2013. The report noted:

'Most had been in the UK as students but three had claimed asylum and were forcibly removed after their asylum claims were rejected. All but seven of these people were detained within weeks of their arrival in Sri Lanka and the majority were specifically interrogated about their reasons for being in the UK, their activities and/or their contacts in the UK. Twenty-one people were accused of attending particular protests and demonstrations in the UK and eleven were shown photographs taken at these events.'[153]

12.2.14 The International Truth & Justice Project (ITJP) Sri Lanka documented the experiences of 20 Sri Lankan Tamils in a January 2016 report on survivors of torture and sexual violence in 2015 and stated that 'In some cases the interrogators showed the victims print outs of photographs of themselves or people close to them attending recent Tamil diaspora commemorative events abroad. ... Some had spent periods in hiding in southern India and it was clear their interrogators regarded this with great suspicion when they returned home.'[154]

12.2.15 The Human Rights Watch 2013 report "We Will Teach You a Lesson", observed that:

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[151] TamilNet, 16 Batticaloa Tamils arrested within last 100 days at Colombo airport, 3 May 2015, http://www.tamilnet.com/art.html?catid=13&artid=37754, date accessed 13 January 2017

[152] International Crisis Group, Sri Lanka Between Elections, 12 August 2015 (IV. Initial Steps on Reconciliation p.17) https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-between-elections, date accessed 17 January 2017

[153] Freedom from Torture, Tainted Peace: Torture in Sri Lanka since May 2009, (page 10 and 22), August 2015, https://www.freedomfromtorture.org/sites/default/files/documents/sl_report_a4_-_final-f-b-web.pdf date accessed 13 January 2017

[154] The International Truth and Justice Project (ITJP), Silenced: survivors of torture and sexual violence in 2015, January 2016 (I. The Victims p.13), http://www.itjpsl.com/assets/Silenced-jan-2016.pdf, date accessed 13 January 2017

'Official detention centers were not just in the conflict areas in the north. Police stations in towns such as in Kotahena, Dehiwela, and Welawatta, and various official and unofficial detention sites in and around Colombo also were used, including Welikada prison, the fourth floor of CID headquarters, and the sixth floor of TID headquarters. Abuses investigated by Human Rights Watch also took place in Boosa prison in Sri Lanka's south, Kaluthara prison in western Sri Lanka, and in Trincomallee police station in the east.'[155]

12.2.16 During a meeting with UK Home Office's FFM Team to Sri Lanka in July 2016, Mr. Sampanthan – Leader of the Tamil National Alliance (TNA) – said that:

'The TNA could not say that people returning to Sri Lanka would be safe but there is change. Tamil people want to go back, to return to their lands, but the military are cultivating Tamil lands which Tamils want back. Where Tamils are living [in the North], fathers are not going to work because they are staying at home to protect their daughters. Tamils want things to change; they want things to get better.'[156]

12.2.17 The International Organisation for Migration (IOM) informed the UK FFM team that:

'Being a former member of the LTTE is not the target, the police were looking for the thousands of Sri Lankans who left the country using forged identities – it is those criminals who were being looked for, because there is a need to know the true identity of the returning person. There may have been other crimes committed, in addition to leaving the country with false documents, which might need investigation and the police need to settle their books – they need to know if cases can be closed or are still pending. Some people may still be wanted for murder.'[157]

12.2.18 The United Nations Senior Human Rights Advisor in Sri Lanka, commented when he met with the UK FFM Team that:

'In terms of the safety of people perceived to have a previous connection with the LTTE returning to Sri Lanka – the screening at the airport may put them under the radar of the Intelligence. Previously when people returned to their communities' ill-treatment would happen, but that does not seem to be the case anymore. The UN [United Nations] and civil society groups on the ground have not reported recent issues of ill treatment on return, but some cases are raised by FfT [Freedom from Torture]. The details from these cases are quite gruesome and it is unclear why the services would do that

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[155] Human Rights Watch, "We Will Teach You a Lesson", Sexual Violence against Tamils by Sri Lankan Security Forces, (Places of Detention), 26 February 2013, https://www.hrw.org/report/2013/02/26/we-will-teach-you-lesson/sexual-violence-against-tamils-sri-lankan-security-forces, date accessed 12 January 2017

[156] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 2: Meeting with the Tamil National Alliance (TNA), 11 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

[157] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 21: Meeting with the International Organization for Migration (IOM), 20 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

and what intelligence would they be able to gain from information provided [under torture].'[158]

12.2.19 The Security Forces (SF) Commander for Jaffna, informed the UK Home Office's FFM Team that: 'If a person returned from the UK, and was suspected of previous LTTE activity they would be offered rehabilitation on return. The certificate which proves the person has been rehabilitated would be like another visa for them, something they could show if stopped by the police.'[159]

See also Rehabilitation of former LTTE combatants.

For further information on exit and entry , see the Report of the UK Home Office's Fact-Finding Mission to Sri Lanka, 11–23 July 2016, in particular meetings with: the Tamil National Alliance (TNA) (section 2), the Jaffna Press Club (section 6), Bishop Emanuel in Trincomalee (section 10); and a peacebuilding and human rights organisation (section 14) .

12.2.20 Statistics on UK asylum applications, decisions, appeals and returns for Sri Lankan nationals is available on the Gov.Uk website[160].

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13. Sur place activities

13.1 Diaspora

13.1.1 The DFAT Report on Sri Lanka dated 24 January 2017, observed:

'There are at least one million Sri Lankan Tamils living outside Sri Lanka, including in Canada, Europe, Australia, Malaysia, and the Indian State of Tamil Nadu. Members of the Sri Lankan Tamil diaspora may be citizens of those countries, dual-nationals or have arrangements to stay legally in their country of residence. Many members of the Tamil diaspora return to Sri Lanka to visit family members, for holidays and for business. Remittances from the Tamil diaspora continue to be an important source of income for family and community members in Sri Lanka.

'The Sirisena government has publicly encouraged all Sri Lankans living overseas to return or invest in the Sri Lankan economy. In general, DFAT assesses that Sri Lankan authorities may monitor any member of the Tamil diaspora returning to Sri Lanka, depending on their risk profile.'[161]

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[158] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 22: UN Senior Human Rights Advisor in Sri Lanka, 21 July 2016, (General Information), https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, date accessed 13 January 2017

[159] UK Home Office's Fact Finding Mission to Sri Lanka, 11 – 23 July 2016, Section 26: Meeting with Security Forces (SF) Commander for Jaffna, 13 July 2016, https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes, Date accessed 13 January 2017

[160] Home Office, Asylum data tables immigration statistics October to December 2016 volume 1, 23 February 2017, https://www.gov.uk/government/collections/migration-statistics, date accessed 13 March 2017

[161] Department of Foreign Affairs and Trade (DFAT), DFAT Country Information Report Sri Lanka, 24

13.1.2 A July 2015 International Truth & Justice Project (ITJP) Sri Lanka report on Sri Lanka's Survivors of Torture and Sexual Violence 2009-2015 stated:

'In several cases witnesses mentioned that they or their family members had been questioned about their participation in anti-government protests or war commemoration events abroad. Some reported the Sri Lankan security forces had showed them, or their families, photographs of themselves at these protests. This indicates the Sri Lankan security forces are monitoring these gatherings outside the country. In the UK at least, some Tamil diaspora organisations have responded by banning cameras at annual Heroes' Day commemorations for the safety of the participants.'[162]

13.1.3 In a January 2016 report on survivors of torture and sexual violence in 2015, the same organisation reported that: 'there is evidence that the intelligence services have continued in 2015 to show detainees who have returned to Sri Lanka photographs of themselves attending Heroes' Day events and other commemorations abroad. This suggests there is continuing interest in surveillance of diaspora events.'[163]

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14. Freedom of movement

14.1.1 On 29 August 2015 Hiru News, a Sri Lanka News Portal, reported that the Omantha checkpoint was no longer in operation:

'Checking at the Vavuniya – Omanthai military checkpoint which was carried for a long period of time was completely stopped today. The Army stated that the decision was taken after considering the peaceful situation in the country. The Omanthai check point was first set up in 2002 to inspect vehicles coming from North to south and vice versa as well as the general public. During the humanitarian operation Madawachchiya and Omanthai checkpoint was considered as one of the main check points. The army has planned to initiate the same security programme in the North as well as in the South. However, Military spokesperson Brigadier Jayanath Jayaweera stated that due to the peaceful situation in the country daily checking is not required. He also stated that whenever it is required checking will recommence at the Omanthai checkpoint.'[164]

14.1.2 US State Department's 2016 Country Report on Human Rights Practices (USSD Report 2016), Sri Lanka, published on 3 March 2017, observed that, 'The law grants every citizen "freedom of movement and of choosing his

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January 2017, (Former LTTE members living outside Sri Lanka, p18), date accessed 3 February 2017. Available on request.

[162] International Truth and Justice Project (ITJP), A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence 2009-2015, July 2015, (C. Reprisals and Persecution p.91), http://www.itjpsl.com/assets/stoptorture_report_v4_online.pdf, date accessed 13 January 2017

[163] The International Truth and Justice Project (ITJP), Silenced: survivors of torture and sexual violence in 2015, January 2016, (III. Reprisals during 2015 p. 30), http://www.itjpsl.com/assets/Silenced-jan-2016.pdf, date accessed 13 January 2017

[164] Hiru News, Checking at Omanthai check point stopped, 29 August 2015, www.hirunews.lk/115699/checking-at-omanthai-check-point-stopped, date accessed 27 January 2017

residence" and "freedom to return to the country." The government at times restricted these rights.'[165]

14.1.3 The DFAT Report on Sri Lanka dated 24 January 2017, observed:

'In 2011, a fundamental rights petition was lodged in the Supreme Court which led to the end of the military's forced registration of residents in Jaffna and Kilinochchi. The military's compulsory registration of Tamils living in the south no longer occurs.

'According to the 2012 census, 18 per cent of the total population had relocated to their current district after being born in another district. The census reported the top five districts to which people had internally migrated were Colombo (593,942), Gampaha (563,363), Kurunegala (202,826), Anuradhapura (169,421) and Puttalam (140,690). There are large Tamil and Muslim communities in the south as a result of internal relocation during the conflict. Many have chosen to not return to their former place of residence in the north, mainly due to better job prospects in the south. Relatively few of the 35,000 Sinhalese who left their homes in the north of Sri Lanka during the conflict have returned.' [166]

14.1.4 The DFAT report further noted:

'Internal relocation options can be limited by the absence of family connections or by a lack of financial resources. Many returnees have reported difficulties in accessing basic necessities such as shelter, food, water and sanitation, and in rebuilding livelihoods. The continued occupation of private lands by the military, difficulties establishing title to land ownership or uncleared land mines or unexploded ordnance can also complicate successful internal relocation, particularly in the north.

'Sri Lankan security forces maintain effective control throughout Sri Lanka and it is unlikely that individuals would be able to relocate internally with any degree of anonymity. In particular, the Sri Lankan military, intelligence and police continue to maintain a high level of awareness of returned IDPs to the north and east. The level of monitoring has reduced under the Sirisena Government but some individuals have reported that their movements continue to be recorded.'[167]

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[165] US State Department's 2016 Country Report on Human Rights Practices (USSD Report 2016), Sri Lanka, published on 3 March 2017, (Section 2. d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons), https://www.state.gov/documents/organization/265760.pdf, date accessed 6 March 2017

[166] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 5.12-5.13), 24 January 2017, date accessed 21 January 2017. Available on request.

[167] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 5.14-5.15), 24 January 2017, date accessed 21 January 2017. Available on request.

Version control and contacts

Contacts

If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then email the Country Policy and Information Team.

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Clearance

Below is information on when this note was cleared:

- version **4.0**
- valid from **31 March 2017**

Changes from last version of this note

Updated country information, in particular the report of a UK Home Office fact-finding mission to Sri Lanka and review commissioned on behalf of the IAGCI. Review and refresh of policy section.

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