



Home Office

# OPERATIONAL GUIDANCE NOTE

## SRI LANKA

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## 1. Introduction

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

COI is published by the Country of Origin Information Service (COIS) on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or humanitarian protection is being considered, caseworkers must consider any elements of Article 8 of the European Convention on Human Rights (ECHR) in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for discretionary leave in accordance with the published policy.
- 1.4** If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2. Country assessment**

- 2.1** Caseworkers should refer to the relevant COI Service country of origin information material. An overview of the human rights situation in certain countries can also be found in the Foreign & Commonwealth (FCO) Human Rights and Democracy Report which examines developments in countries where human rights issues are of greatest concern:

<http://fcohdreport.readandcomment.com/read-and-download-the-report/>

## **2.2 Actors of protection**

- 2.2.1** Caseworkers must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the state, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the state) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.2.2** The US State Department 2012 Human Rights report for Sri Lanka notes that “The Inspector General of Police (IGP) is responsible for the nearly 90,000 member Sri Lanka Police Service (SLPS). The SLPS conducts civilian police functions such as enforcing criminal and traffic laws, enhancing public safety, and maintaining order. The IGP reports to the defence secretary (in a separate chain of command from that of the armed forces and other military units). Few police officers serving in Tamil-majority areas were Tamil and most did not speak Tamil or English, although the government began hiring and training ethnic Tamils. A batch of 245 new Tamil recruits reported to training on October 1, approximately 80 percent of whom were

from the north. On October 15 [2012], police confirmed that, including the October 1 group, there were 318 Tamil recruits in training and 1,177 Tamil officers sworn in and deployed in communities".<sup>1</sup> The FCO in its 2012 Human Rights & Democracy report, published April 2013, states that "The Sri Lankan government reported that recruitment of Tamil-speaking police increased by 427 to 1,216 in 2012. The UK funded Tamil language training for police and a project supporting implementation of Sri Lanka's tri-linguistic police".<sup>2</sup>

- 2.2.3** "The nearly 6,000-member paramilitary Special Task Force (STF) is within the structure of the SLPS, although joint operations with military units in the past led to questions among observers about who actually was directing the STF. The Civil Defence Force (CDF) (formerly known as the Home Guard) is an auxiliary force to the police and is designed to help keep law and order without increasing police or military presence in politically sensitive areas".<sup>3</sup> "During the year [2012] the Ministry of Defence added 800 CDF personnel, primarily Tamils, from the north and east".<sup>4</sup>
- 2.2.4** "There were reports that the government, its agents, or its paramilitary allies committed arbitrary or unlawful killings, but reliable statistics on such killings were difficult to obtain, because past complainants were killed and some families were fearful of reprisals if they filed complaints. Among these arbitrary or unlawful killings, there were reports of suspects detained by police or other security forces who died under questionable circumstances. While the overall number of extrajudicial killings appeared to decrease from previous years, killings and assaults on civilians by government officials was a problem".<sup>5</sup> "The Prevention of Terrorism Act (PTA) is still in force; it allows people to be arrested and detained for up to 18 months without charge on the basis of a mere suspicion".<sup>6</sup>
- 2.2.5** "Widespread impunity persisted, particularly for cases of police torture, corruption, human rights abuses, and attacks on media institutions. The failure of police to apprehend perpetrators highlighted the high level of impunity in an environment in which law enforcement possessed widespread powers of detention and surveillance but failed to solve cases of attacks on those critical of the government".<sup>7</sup>
- 2.2.6** "The law makes torture a punishable offense and mandates a sentence of not less than seven years' and not more than 10 years' imprisonment. However, there were credible reports that police and security forces tortured and abused citizens. The PTA allows for confessions from torture to be admitted as evidence".<sup>8</sup> "The National Police Commission was reinstated February 16 [2012] to receive and investigate

<sup>1</sup> [US State Department, Country Reports on Human Rights Practices for 2012: Sri Lanka, 19 April 2013, Section 1. Respect for the Integrity of the Person, including freedom from: d Arbitrary Arrest or Detention: Role of the Police and Security Apparatus](#)

<sup>2</sup> [UK Foreign & Commonwealth Office \(FCO\) 2012 Human Rights & Democracy report: April 2013: Countries of Concern: Sri Lanka.](#)

<sup>3</sup> [US State Department, Country Reports on Human Rights Practices for 2012: Sri Lanka, 19 April 2013, Section 1. Respect for the Integrity of the Person, including freedom from: d Arbitrary Arrest or Detention: Role of the Police and Security Apparatus.](#)

<sup>4</sup> [US State Department, Country Reports on Human Rights Practices for 2012: Sri Lanka, 19 April 2013, Section 1. Respect for the Integrity of the Person, including freedom from: d Arbitrary Arrest or Detention: Role of the Police and Security Apparatus.](#)

<sup>5</sup> [US State Department, Country Reports on Human Rights Practices for 2012: Sri Lanka, 19 April 2013, Section 1. Respect for the Integrity of the Person, including freedom from: d Arbitrary or Unlawful Deprivation of Life.](#)

<sup>6</sup> [Swiss Refugee Council: Adrian Schuster, Sri Lanka: current situation, 15 November 2012](#)

<sup>7</sup> [US State Department, Country Reports on Human Rights Practices for 2012: Sri Lanka, 19 April 2013, Section 1. Respect for the Integrity of the Person, including freedom from: d Arbitrary Arrest or Detention: Role of the Police and Security Apparatus.](#)

<sup>8</sup> [US State Department, Country Reports on Human Rights Practices for 2012: Sri Lanka, 19 April 2013, Section 1. Respect for the Integrity of the Person, including freedom from: c. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.](#)

complaints from the public against the police. It had been inactive since 2009 due to a failure to appoint new commission members. The Police Commission received approximately 500 complaints from February to October”.<sup>9</sup>

- 2.2.7** “Almost as soon as Sri Lanka’s armed conflict ended and concurrent with the government’s crackdown on post-war critics, has been its re-consolidation of powers that had been devolved over the years in various efforts to address Tamil grievances and other demands for more localized and accountable political structures. Among its first targets were the independent commissions established to oversee key institutions of governance”.<sup>10</sup>
- 2.2.8** “Following the September 2010 passage of the 18th amendment, executive influence over the judiciary significantly increased. The 18th amendment repealed the 17th amendment and eliminated the Constitutional Council, a multiparty body created to name members of independent judicial, police, human rights, and other commissions. In place of the Constitutional Council, the 18th amendment established the Parliamentary Council, which submits nonbinding advice on appointments to the president, who has sole authority to make direct appointments to the commissions. The president also directly appoints judges to the Supreme Court, High Court, and courts of appeal. There were coordinated moves during the year by the government to undermine the independence of the judiciary”.<sup>11</sup>
- 2.2.9** “In January 2013, Sri Lanka faced an unprecedented constitutional crisis when the Chief Justice was impeached on charges of misconduct despite a Supreme Court ruling that the impeachment procedure was unconstitutional. The impeachment bid came after months of increasing tension between the judiciary and the executive over court rulings in favour of the victims of human rights violations and against projects proposed by government Ministers. Even before it became clear that the government planned to impeach the Chief Justice, lawyers and judges were already expressing public concern over other alleged attempts to interfere with the independence of the judiciary”.<sup>12</sup>
- 2.2.10** The International Bar Association’s Human Rights Institute in its April 2012 report “A crisis of legitimacy- The impeachment of Chief Justice Bandaranayake and the erosion of the rule of law in Sri Lanka states “the Chief Justice was ousted in circumstances that were characterised by suspect motivations and a seriously unfair procedure. The finding that she was guilty of three counts of serious misbehaviour was made unlawfully and contrary to principles of natural justice, and none of those counts was proved to an appropriate standard. The flawed and hasty manner of Chief Justice Bandaranayake’s removal reflects a deeper crisis. Independent checks on executive power have been dismantled and vendettas against critics of the executive are being normalised”.<sup>13</sup>
- 2.2.11** The FCO 2012 HR & Democracy report notes “In October [2012] the Secretary of

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<sup>9</sup> [US State Department, Country Reports on Human Rights Practices for 2012: Sri Lanka, 19 April 2013, Section 1, Respect for the Integrity of the Person, including freedom from: d Arbitrary Arrest or Detention: Role of the Police and Security Apparatus.](#)

<sup>10</sup> [Amnesty International: Sri Lanka Assault on Dissent, 30 April 2013: III Consolidating Power in Post Conflict Sri Lanka \(2009 – Present\) – Expanding Executive Power.](#)

<sup>11</sup> [US State Department, Country Reports on Human Rights Practices for 2012: Sri Lanka, 19 April 2013, Section 1, Respect for the Integrity of the Person, including freedom from: e Denial of Fair Public Trial.](#)

<sup>12</sup> [Amnesty International: Sri Lanka’s Assault on Dissent: 30 April 2013, III Consolidating Power in Post Conflict Sri Lanka \(2009 – Present\): Undermining Independence of the Judiciary.](#)

<sup>13</sup> [International Bar Association’s Human Rights Institute.: A crisis of legitimacy – the impeachment of Chief Justice Bandaranayake and the erosion of the rule of law in Sri Lanka, April 2013: Chapter 4 Conclusions and Recommendations, 4.1. Conclusion.](#)

the Judicial Service Commission was hospitalised following an attack by unidentified armed men in broad daylight in outer Colombo. He had previously been criticised in the state-owned media for, among other things, issuing a statement alleging attempts to interfere with the independence of the judiciary. Together with European Union (EU) partners, our High Commission in Colombo raised serious concerns with the Sri Lankan authorities and pressed for an investigation into the incident.” The same report highlighted that “On 15 November, the United Nations (UN) Special Rapporteur on Independence of Judges and Lawyers released a statement criticising the impeachment [of the Chief Justice], stating that “The misuse of disciplinary proceedings as a reprisals mechanism against independent judges is unacceptable. The Commonwealth Secretary-General also expressed concern at the impeachment process”.<sup>14</sup>

**2.2.12** “Citizens may file fundamental rights cases to seek redress of human rights violations. The judiciary exhibited some independence and impartiality in adjudicating these types of cases, and plaintiffs were awarded damages in a number of instances. Observers cited bureaucratic inefficiencies in this system, leading to delays in the resolution of many cases. Where damages were awarded, there were relatively few problems in enforcing the court orders”.<sup>15</sup>

**2.2.13** The Asian Human Rights Commission (AHRC) in its 2012 report on Human Rights in Sri Lanka states “The possibility of any credible investigation into violations of [human] rights has come to an end. In the absence of such investigations, the possibility of prosecutions does not exist and, in any case, the prosecutor - that is, the Attorney General’s Department - is under the control of the new administration of the executive president. The judiciary has ceased to be a separate branch of governance and is now under the control of the executive president.<sup>16</sup> Nepotism, corruption and crime have contributed to a general curtailment of basic democratic rights. Over the past year, many critics and political opponents have been abducted”.<sup>17</sup>

**2.2.14** The AHRC also reports “On an almost daily basis the Asian Human Rights Commission receives complaints related to the practice of torture and ill-treatment by the police in Sri Lanka. From January to November 2011 the AHRC issued a total of 106 urgent appeals on torture and ill-treatment in Sri Lanka, based on information gathered by local grass-root organisations. In the majority of cases, the perpetrators were members of the police force. In most of the cases, victims appear to be randomly selected, arrested, and detained by the police on unsubstantiated charges and are subsequently subjected to torture or ill-treatment to obtain a confession for those charges. Often, the police target innocent people from a poorer socio-economic background. In the absence of a state-sponsored legal aid scheme the members of the weakest social groups rarely have the resources at hand to hold the police accountable for the abuse. The numerous urgent appeals illustrate that torture in Sri Lanka is a widespread and systematic practice”.<sup>18</sup>

<sup>14</sup> [UK Foreign & Commonwealth Office \(FCO\) 2012 Human Rights & Democracy report: April 2013: Countries of Concern: Sri Lanka.](#)

<sup>15</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 1 Respect for the Integrity of the person, including freedom from d. Arbitrary arrest or detention, Civil Judicial Procedures and Remedies.](#)

<sup>16</sup> [Asian Human Rights Commission: State of Human Rights in Sri Lanka, 2012, accessed 19 June 2013: Preamble](#)

<sup>17</sup> [LandInfo: Sri Lanka: Human Rights and security issues concerning the Tamil population in Colombo and the Northern Province, 7 December 2012: Introduction](#)

<sup>18</sup> [Asian Human Rights Commission: State of Human Rights in Sri Lanka, 2012, accessed 19 June 2013: 1.5\(A\) What happened to protect and serve, p64.](#)

**2.2.15 Conclusion:** If the applicant's fear is of ill-treatment/persecution by the state authorities, or by agents acting on behalf of the state, then state protection will not be available. Consideration does need to be given as to whether the fear is based on a localised, random or national threat and whether redress might be available through the courts; though the judiciary is subject to increasing political interference.

**2.2.16** If the ill-treatment/persecution is at the hands of non-state agents, then the provision of state protection may be accessible. Caseworkers must refer to the most up to date country information to ascertain whether in the circumstances prevailing at the time the decision is made, effective protection is available for an individual applicant, taking full account of their personal circumstances.

## **2.3 Internal relocation.**

**2.3.1** Caseworkers must refer to the asylum instruction (AI) on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Caseworkers must refer to the gender issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

**2.3.2** Very careful consideration must be given to whether internal relocation would be a viable way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.

**2.3.3** "The law grants every citizen "freedom of movement and of choosing his residence" and "freedom to return to the country." In practice, however, the government restricted this right on multiple occasions. The government did not expel citizens from one part of the country to another, nor did it forcibly exile any citizens abroad, but it allowed citizens to leave the country under self-exile, unless they were accused of breaking the law. More than a dozen journalists, having received physical threats, remained in self-exile due to safety fears".<sup>19</sup>

North

**2.3.4** "The government restricted internal movement through police and military

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<sup>19</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 2 Respect for Civil Liberties: including d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees and Stateless Persons.](#)

checkpoints in the north, which made it difficult for many to travel even short distances, particularly at night. The number of such checkpoints in Jaffna, however, appeared to decline during the year [2012]. The government continued security checks on movements in all directions north of a key junction in Vavuniya district, although there were fewer checkpoints than during and immediately after the war. Limited access continued near military bases and the high security zones (HSZs) where civilians could not enter”.<sup>20</sup>

- 2.3.5** Vavuniya: “Most checkpoints and barricaded areas are gone, and the civilians spoken to characterised civilian traffic as unobstructed. The main check point at Medawachchiya, south of Vavuniya town, where travellers in both directions had to change vehicles, were registered and subjected to individual security checks (which often took over five hours), had been removed. As we passed Medawachchiya there were two representatives of the military forces on the road and traffic was not controlled. Regular train services between Colombo and Vavuniya were resumed in March 2011”.<sup>21</sup>
- 2.3.6** Vanni: “Based on the visible military activity that characterises the entire stretch of the A9 north of Vavuniya and on interlocutors' data, the Vanni may be characterised as massively militarised. At the same point several interlocutors in Vanni indicated that the military presence was not taking the form of a control regime similar to that which was established in the government controlled areas during the conflict period; barricaded checkpoints, comprehensive arbitrary arrests of civilians, and so on. Local informants in Vanni emphasised that the extensive military presence was creating a number of problems for the locals, but most believed that civilians were not significantly hampered by the security and army presence. The majority of interlocutors in Vanni said, however, that the military were monitoring and recording the population. One international organisation believes that it is uncertain whether the registration and recording of Tamils have ceased as of mid April 2012”.<sup>22</sup>
- 2.3.7** Jaffna: “There is broad consensus that Jaffna is still heavily militarised and that police authorities have limited authority. The extent of control and security screening of civilians does not appear to be as extensive in Jaffna as in Vanni. During the day there are only a few checkpoints, but several interlocutors claim that additional checkpoints are established during the evening and night-time”.<sup>23</sup>
- 2.3.8** “In the Northern Province the security forces' massive presence is hampering the recovery of the local economy, civil institutions and ordinary social life. Conflict related disappearances and killings appear to have ceased, but an alarming number of abductions are recorded”.<sup>24</sup> “The Northern Province, Vanni<sup>25</sup> and Jaffna are dominated by the army presence. The threats do not seem to justify the security force's extensive presence and control of the population, particularly those released from rehabilitation camps”.<sup>26</sup> “At the same time it is

<sup>20</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 2 Respect for Civil Liberties: including d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees and Stateless Persons.](#)

<sup>21</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and the Northern Province- 2.2 Vavuniya](#)

<sup>22</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and the Northern Province- 2.3 Northern Province: 2.3.1 Control of civilians in Vanni](#)

<sup>23</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and the Northern Province- 2.3 Northern Province: 2.3.4 Jaffna](#)

<sup>24</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and the Northern Province- Summary.](#)

<sup>25</sup> Districts of Mannar, Mullaitivu, Vavuniya and Killinochchi.

<sup>26</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and](#)

noted that the population, which a few years ago harboured serious fear of the security forces, now has a relatively relaxed attitude to the army. There is broad consensus that Jaffna is still heavily militarised and that police authorities have limited liability. Both local politicians and representatives of international organisations claimed that in many areas it was not possible to go out after dark; the former rule that meetings with the three participants must be reported to the army is still applied. With regard to political meetings, there is an undivided consensus that the security regime involves a high risk of problems and even violence”.<sup>27</sup> “A member of parliament from Jaffna claimed that the army harasses locals through frequent house searches”.<sup>28</sup>

- 2.3.9** Colombo: “The number of temporary, as well as formal stationary, checkpoints in Colombo appeared to decline from the previous year”.<sup>29</sup> LandInfo report “In April 2012 Colombo no longer appeared to be as militarised and dominated by security arrangements as it did in 2010. The most striking development is the apparent reduction in the number of checkpoints and armed personnel. Interlocutors describe the security forces' permanent and temporary security control as limited, and as of April 2012 round-ups, household registration and cordon-and-search operations do not seem to be part of the security regime in Colombo. Such surveillance and security measures were previously pervasive in the capital. As regards household registration most interlocutors had no information of systematic registration of Tamil households in Colombo in April 2012”.<sup>30</sup> UNHCR state “Currently there is no specific requirement for Tamils or persons of any other ethnicity to register with the police if they take up residence in Colombo. Since the end of the armed conflict, the number of security checkpoints in Colombo has been reduced.”<sup>31</sup> The Swiss Refugee Council reports “In Colombo, it seems that major raids are now less frequent”.<sup>32</sup>

#### Situation for Women

- 2.3.10** “There are no reported legal restrictions on women’s access to public space in Sri Lanka. However, women’s freedom of movement in conflict-affected areas has been infringed by the threat or incidence of sexual violence. Further, women’s freedom of movement has been curtailed in the camps for internally displaced people, where it is reported that they have been subject to widespread human rights violations based on their gender”.<sup>33</sup>

#### Internally Displaced Persons (IDPs)

- 2.3.11** “While all IDPs had full freedom of movement, some of whom were able to return to their home districts, were nevertheless unable to move back onto their own property due to un-cleared land mines, restrictions designating their home areas as part of sensitive areas or the High Security Zones (HSZs), lack of documents to verify land

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[the Northern Province- Introduction](#)

<sup>27</sup> [LandInfo: Sri Lanka: Human Rights and security issues concerning the Tamil population in Colombo and the Northern Province, 7 December 2012, Section 2 The Government’s security regime in different areas: 2.3.2 Freedom of assembly – Vanni and Jaffna.](#)

<sup>28</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and the Northern Province- 2.3 Northern Province: 2.3.4 Jaffna](#)

<sup>29</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 2 Respect for Civil Liberties: including d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees and Stateless Persons.](#)

<sup>30</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and the Northern Province- 2.1 Colombo](#)

<sup>31</sup> [UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka III Eligibility International Protection B Internal flight or Relocation alternative page 39](#)

<sup>32</sup> [Adrian Schuster Sri Lanka: current situation 15 November 2012; 3.1 Security Apparatus.](#)

<sup>33</sup> [OECD Development Centre: Social Institutions & Gender Index: Sri Lanka: Restricted Civil Liberties; website accessed 30 May 2013](#)



ownership, and other war-related destruction. Living conditions for these persons were often difficult and substandard. Coordination among the army, local government agents, and humanitarian agencies on resettling IDPs continued to improve. This is largely due to decreased numbers coming out of IDP camps and improved cooperation on the ground among the army, the UNHCR, and Government Agent Office officials charged with registration of IDPs returning to their areas of origin”.<sup>34</sup>

**2.3.12** “Nearly 100,000 individuals displaced prior to the last major offensive by the military in 2008 remain unable to return to their lands of origin. Among these long-term displaced were approximately 73,000 Muslims that the Liberation Tigers of Tamil Eelam (LTTE) evicted from Jaffna, Kilinochchi, Mullaitivu, Mannar, and Vavuniya in 1990. Also among the long-term displaced were 10,000 individuals displaced by high-security or exclusive economic zones, persons living in welfare centres in the Jaffna area, and others in transit camps in Trincomalee”.<sup>35</sup>

**2.3.13 Conclusion:** The UN High Commission for Refugees (UNHCR) states in its Eligibility Guidelines for Sri Lanka that “Where the agent of persecution is the state itself or associated with it, UNHCR considers that no internal flight or internal relocation alternative (IFA/IRA) is possible elsewhere in the country, as the agent of persecution would be able to pursue the individual throughout the territory. For Sri Lankans fleeing persecution or serious harm by a non-state agent, an IFA/IRA could be considered. Whereas a particular non-state agent of persecution may not be able to pursue an individual throughout the territory, the impact of discriminatory legislation, policies or practices and unsanctioned societal discrimination is not limited to certain parts of the country. In such a situation, the willingness and ability of the authorities to protect the individual in the relocation area needs to be assessed but cannot be taken for granted”.<sup>36</sup>

**2.3.14** The Tribunal concluded in the country guidance case of GJ & Others (post –civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) [see section 2.4 – Caselaw] -that “Internal relocation is not an option within Sri Lanka for a person with a real risk from the Sri Lanka authorities since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passage through the airport” (paragraph 356).

**2.3.15** The Tribunal noted that “UNHCR nevertheless considers that relocation may be available where the fear is of non-state agents” (paragraph 292). Therefore where the feared persecution emanates from non state agents, it may be practical for applicants in some categories, who may have a well-founded fear of persecution in one area, to relocate to other parts of Sri Lanka. Caseworkers will need to take into account the personal circumstances and gender of the individual and whether it would not be unduly harsh to expect them to relocate. As UNHCR emphasise it is the individual circumstances of each case which must be considered.

**2.3.16** Careful consideration must therefore be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual

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<sup>34</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 2 Respect for Civil Liberties: including d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees and Stateless Persons.](#)

<sup>35</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 2 Respect for Civil Liberties: including d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees and Stateless Persons](#)

<sup>36</sup> [UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka III Eligibility International Protection B Internal Flight or Relocation Alternative.](#)

circumstances of the particular claimant. Case workers need to consider the ability of the persecutor to pursue the claimant in the proposed site of relocation, and whether effective protection is available in that area. Caseworkers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the claimant, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including the claimant's ability to sustain themselves.

## 2.4 Country guidance caselaw

Caseworkers are reminded that case law must be read in conjunction with the most up to date country information. The case of GJ & Others [detailed below] has replaced all existing country guidance on Sri Lanka.

### [GJ and Others \(post-civil war: returnees\) Sri Lanka CG \[2013\] UKUT 00319 \(IAC\)](#)

The Tribunal found that:

- 1) This determination replaces all existing country guidance on Sri Lanka.
- (2) 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.
- (3) 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.
- (4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.
- (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
- (6) There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. 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.
- 7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
  - (a) 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.

- (b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.
- (c) 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.
- (d) 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.
- (8) 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.
- (9) The authorities maintain a computerised intelligence-led “watch” list. A person whose name appears on a “watch” list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any Diaspora activities carried out by such an individual.
- (10) Consideration must always be given to whether, in the light of an individual’s activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the “Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka”, published by UNHCR on 21 December 2012.

**Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)**

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a

religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

### **3. Main categories of claims**

- 3.1** This section sets out the main types of asylum, humanitarian protection and discretionary Leave claims on human rights grounds (whether explicit or implied) made by those entitled to reside in Sri Lanka. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, humanitarian protection, sufficiency of protection and internal relocation are set out in the relevant asylum instructions, but how these affect particular categories of claim are set out in the instructions below. All asylum instructions can be accessed through the Horizon intranet site. The instructions are also published externally on the Home Office internet site at [asylum policy instructions](#).
- 3.2** Each claim should be assessed to determine whether there is a reasonable likelihood that the applicant would, if returned, face persecution for a Convention reason, for instance, due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal's judgment in [Karanakaran](#) should be followed when deciding how much weight to be given to the material provided in support of the claim. See asylum instruction, '[Considering the asylum claim and assessing credibility](#)'.
- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to section 55 of the Borders, Citizenship and Immigration Act 2009. The Home Office instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all departments' activities.
- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of humanitarian protection is appropriate: see asylum instruction on [Humanitarian Protection](#). Where an application for asylum and Humanitarian Protection falls to be refused, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. They must also consider whether there are any compelling reasons for granting discretionary leave to the individual concerned- see asylum instruction on [Discretionary Leave](#).

#### **Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR**

- 3.5** An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of humanitarian protection because the Article 3 threshold has been met.

#### **Other severe humanitarian conditions and general levels of violence**

- 3.6** There may come a point at which the general conditions in the country, for example, absence of water, food or basic shelter, are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

### **Credibility**

- 3.8** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see Section 4 – Making the Decision in the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)'. Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the caseworker should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.
- 3.9 Tamils, in particular those suspected of links to the Liberation Tigers of Tamil Eelam (LTTE)**
- 3.9.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Sri Lankan authorities due to their perceived support for, or past involvement with, the LTTE, or Tamil ethnicity generally.
- 3.9.2** This section should be read in conjunction with 3.10 Fear of the LTTE for details on the LTTE post conflict, 3.11 on political activists/opponents and with 2.2 Actors of Protection and 2.3 Internal Relocation.
- 3.9.3 Treatment.** The US Central Intelligence Agency (CIA) World Fact book states the demography of Sri Lanka as being "Sinhalese 73.8%, Sri Lankan Moors (see 3.15.3) 7.2%, Indian Tamil 4.6%, Sri Lankan Tamil 3.9%, other 0.5%, unspecified 10% (2001 census provisional data).<sup>37</sup> The US State Department report on Human Rights in Practice notes "There were 27 Tamils in the [225 member] parliament"<sup>38</sup>

<sup>37</sup> [US Central Intelligence Agency World Fact book: Sri Lanka; background: Updated 10 June 2013](#)

<sup>38</sup> [US State Department; Country Reports on Human Rights Practices for 2012: Sri Lanka; 19 April 2013; Section 3 Respect for Political Rights: The Right of Citizens to change their Government, Elections and Political Participation.](#)

and “both local and Indian-origin Tamils maintained that they suffered long-standing, systematic discrimination in university education, government employment, and other matters controlled by the government. Tamils throughout the country, but especially in the north and east, reported that security forces and paramilitary groups frequently harassed young and middle-age Tamil men”.<sup>39</sup> The US State Department also reported “During the year [2012] the Department of Hindu Religious Affairs gave financial assistance to reconstruct temples destroyed during the conflict in the north and east, developed Hindu Aranery Schools (religious-based primary schools), and conducted seminars and workshops for teachers of Hinduism. Religious tensions continued in the north following the conclusion of a 27-year conflict between the Buddhist-majority government and the Hindu-majority Liberation Tigers of Tamil Eelam (LTTE). Government troops continued to build Buddhist shrines in Tamil areas of the north. Some Tamil groups alleged this demonstrated government-sponsored Sinhalese colonization of former LTTE held areas. The number of Buddhist statues, viharas, and stupas in the northern districts of Jaffna and Kilinochi increased during the year”.<sup>40</sup>

- 3.9.4** The UNHCR Eligibility Guidelines “Assessing the International Protection Needs of Asylum Seekers from Sri Lanka” state “At the height of its influence in Sri Lanka in 2000-2001, the LTTE controlled and administered 76% of what are now the northern and eastern provinces of Sri Lanka. Therefore, all persons living in those areas, and at the outer fringes of the areas under LTTE control, necessarily had contact with the LTTE and its civilian administration in their daily lives. Originating from an area that was previously controlled by the LTTE does not in itself result in a need for international refugee protection”.<sup>41</sup>
- 3.9.5** Jane’s Sentinel Country Risk Assessments, Country Report, Sri Lanka, states “The Sri Lankan Tamil Diaspora forms the largest and most politically significant expatriate grouping outside the country. Many were driven from the country and have retained a strong sense of animosity towards Sri Lanka coupled with a willingness to support the cause of an independent state through financial donations to front organisations associated with the LTTE. The largest concentrations of Tamils are in India/Tamil Nadu (approx 200,000), Canada (150,000-200,000), followed by the United Kingdom (180,000)----“<sup>42</sup>
- 3.9.6** The US CIA World Fact book reports “By May 2009 the government announced that its military had defeated the remnants of the LTTE. The government has resettled more than 95% of those civilians who were displaced during the final phase of the conflict and released the vast majority of former LTTE combatants captured by Government Security Forces. At the same time there has been little progress on more contentious and politically difficult issues such as reaching a political settlement with Tamil elected representatives and holding accountable those alleged to have been involved in human rights violations at the end of the war”.<sup>43</sup>
- 3.9.7** The UNHCR Eligibility guidelines, “Assessing the International Protection Needs of Asylum Seekers from Sri Lanka” include in its risk categories “persons suspected of

<sup>39</sup> [US State Department; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 6 Discrimination, Societal Abuses and Trafficking in Persons, National/Racial/Ethnic Minorities.](#)

<sup>40</sup> [US State Department, International Religious Freedom Report for 2012: Sri Lanka, 20 May 2013: Section II: Status of Government Respect for Religious Freedom, Legal/Policy Framework.](#)

<sup>41</sup> [UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka , 21 December 2012 , Risk Profiles A.1: Persons suspected of certain links with the Liberation Tigers of Tamil Eelam \(LTTE\).](#)

<sup>42</sup> [Country of Origin Information Report: Sri Lanka: 7 March 2012, Tamils 18.06](#)

<sup>43</sup> [US Central Intelligence Agency World Fact book: Sri Lanka; background: Updated 10 June 2013](#)

certain links with the LTTE”.<sup>44</sup> The guidelines go on to comment “However, previous (real or perceived) links that go beyond prior residency within an area controlled by the LTTE continue to expose individuals to treatment which may give rise to a need for international refugee protection, depending on the specifics of the individual case. The nature of these more elaborate links to the LTTE can vary, but may include people with the following profiles:

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

**3.9.8** The same guidelines note “Information has been published documenting cases of mistreatment and torture of women and men in detention (police custody or other forms of detention), for reason of their or their family members’ alleged former links with the LTTE. Killings have been reported which appear to be politically motivated, targeting persons believed to be LTTE sympathizers. Sexual violence, including but not limited to rape, against Tamil men in detention has also been reported recently, including reports of cases perpetrated in the post-conflict period. Sexual harassment of former LTTE combatants in rehabilitation centres has also been reported.”<sup>45</sup>

**3.9.9** Amnesty International in its report “Sri Lanka’s Assault on Dissent” states that “During the armed conflict between Sri Lankan government forces and the LTTE gross and large-scale violations of international human rights and humanitarian law were committed by both sides with impunity. In the final years of the conflict, which ended in May 2009 with Sri Lankan forces defeating the LTTE, there were credible allegations of war crimes and crimes against humanity having been committed by government forces and the LTTE. During the conflict both sides also used threats and violence to silence detractors. Thousands of Tamils were denied rations, services, or the permission to leave LTTE territory, charged fines, detained and killed by the LTTE as “traitors” for acts of perceived disloyalty. One of the holdovers from Sri Lanka’s armed conflict is a security regime that criminalizes freedom of expression, and an official attitude that equates dissent with treason”.

**3.9.10** Amnesty International also notes that “advocates for the human rights of minorities (including Tamils and Muslims), amongst other profiles of dissenters, have been subjected to intimidation, vilification, and physical attacks for their comments or actions deemed critical of the government. In Sri Lanka’s north and east, where

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<sup>44</sup> [UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012 Risk Profiles A.1: Persons suspected of certain links with the Liberation Tigers of Tamil Eelam \(LTTE\).](#)

<sup>45</sup> [UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012 Risk Profiles A.1: Persons suspected of certain links with the Liberation Tigers of Tamil Eelam \(LTTE\).](#)

much of the armed conflict played out and where large concentrations of Tamils live, the army remains vigilant against even minor acts of dissent. Human rights defenders there report heavy police surveillance and repeated interrogation about their activities, international contacts and donors. Many victims of this new repression are not prominent activists engaged in advocacy at the international level, but local community workers providing assistance to people struggling to recover from decades of armed conflict”.<sup>46</sup>

**3.9.11** “Reintegration of former combatants released from rehabilitation remained challenging due to intensive surveillance by the military, social stigma (some people were afraid to associate themselves with ex-combatants who regularly had to report to the army), employment difficulties, and psychological trauma. Several released ex-combatants reported torture or mistreatment, including sexual harassment, by government officials while in rehabilitation centres”.<sup>47</sup> Former “rehabilitees” reportedly face problems reintegrating upon release. Many are visited by military and intelligence agents, or are required to report regularly to local military “Civil Affairs Officers”, local police and military camps. Many are believed to have been put under pressure to act as informants. Should the individual fail to report to the military authorities on a regular basis, family members are directly questioned by the military on their whereabouts. Additionally, relatives of former LTTE fighters who did not surrender continue to face interrogation by the authorities. The issuance of ad hoc “release certificates” by these authorities, including with expiration dates, reportedly creates confusion as to the status of those who are released. “Rehabilitees” report that they self-limit their movements within and outside their immediate community, which also has a negative impact on certain livelihood opportunities”.<sup>48</sup>

**3.9.12** The Landinfo report, Sri Lanka Human Rights & Security Issues concerning the Tamil population in Colombo and Northern Province, of December 2012 notes “The comprehensive control regime that was built up in Colombo during the war has been phased out. The number of Tamils who are subjected to arbitrary arrest and detention under terrorism legislation has been significantly reduced.”<sup>49</sup> The same report notes that “there is no doubt that the ethnic conflict and civil war between the LTTE and the government has cemented fears, prejudices and preconceptions in broad sections of the Sinhalese as well as the Tamil population in Sri Lanka. This affects both the actual situation in the country and the information provided by some of the informants. After the visit Landinfo has formed the following overall picture:

- Surveillance, security arrangements and the risk of arrests no longer dominate the lives of the Tamil population in Colombo and in the south.
- The number of interned Tamils under the Prevention of Terrorism Act (PTA) has been reduced, and the majority of the approximately 13,000 who were in rehabilitation camps have been released. There are few records of re-arrest of persons released from rehabilitation.
- The Northern Province, Vanni and Jaffna, are dominated by the presence of the army. The prevailing security situation does not seem to justify the security forces’ extensive presence and the security measures imposed on the population, particularly those released from rehabilitation camps

<sup>46</sup> [Amnesty International: Sri Lanka’s Assault on Dissent, published 30 April 2013: Introduction.](#)

<sup>47</sup> [US State Department: Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 1. Respect for the Integrity of the Person, including freedom from d. Arbitrary Arrest or Detention.](#)

<sup>48</sup> [UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2013, Risk Profiles A.1: Persons suspected of certain links with the Liberation Tigers of Tamil Eelam \(LTTE\).](#)

<sup>49</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and the Northern Province- 7 December 2012, Summary](#)



- There is nothing to indicate that returning Tamils are treated specially or are at risk of abuse.
- Nepotism, corruption and crime have contributed to a general curtailment of basic democratic rights. Over the past year, many critics and political opponents have been abducted<sup>50</sup>.

**3.9.13** Landinfo reports “Interlocutors describe the security forces’ permanent and temporary security control units as limited, and as of April 2012 round-ups, access control, household registration or cordon-and-search operations do not seem to be part of the control regime in Colombo. Such control measures were formerly pervasive in the capital. None of the interlocutors in Colombo had information indicating that this category of arbitrary arrests was still taking place in Colombo in 2012. This corresponds with information about the dismantling of infrastructure, control systems and security screening of Tamil civilians. None of the informants provided information indicating that there were still direct conflict-related violence, disappearances and extrajudicial executions by the spring of 2012 for Tamils in the capital area or south”. Over the past year, however, an increasing number of abductions have been registered, including in Colombo<sup>51</sup> The International Crisis Group notes in a February 2013 report that “government security forces have broken up peaceful Tamil protests in the north, detained students on questionable charges of working with the LTTE and actively harassed Tamil politicians”<sup>52</sup>.

**3.9.14** Amnesty International reports “Since the end of the armed conflict in May 2009, the Sri Lankan authorities have placed tight restrictions on events and religious observances held in the north and east to commemorate and mourn war victims, particularly those held around 27 November, the LTTE’s “Heroes Day” which was established to commemorate cadres killed during Sri Lanka’s armed conflict and which falls on the day after late LTTE leader Velupillai Prabhakaran’s birthday and coincided with the Hindu festival of Karthikai Vilakkeedu. Jaffna-based media reported, citing the National Human Rights Commission’s Jaffna district office, that 47 people were arrested in Jaffna and Kilinochchi in the wake of student protests at the end of November 2012, and that 44 of them who were allegedly suspected of links to the LTTE had been detained for interrogation. On 1 December 2012 students Sanmugam Solaman, P. Tharshananth, Secretary of the Jaffna University Students’ Union; Kanesamoorthy Sutharsan, and K. Jenemajeyamenan, President of the Arts Faculty Student Union were arrested and held under the PTA in Vavuniya for interrogation and held without charge at Welikanda Rehabilitation Centre. President Mahinda Rajapaksa ordered the release of P. Tharshananth and, K. Jenemajeyamenan, on 13 February [2013]. There have been a series of previous violent attacks on student activists in Jaffna, as well as efforts to prevent students from organising”<sup>53</sup>.

**3.9.15** The Swiss Refugee Council reports “Although the LTTE may have been defeated, and there is not the slightest sign that this organisation has survived, the State machine of Sri Lanka is extremely paranoid and is trying to contain any resurgence of this group, or the germination of tendencies of independence alongside the Tamils. This concern has direct repercussions on all of the Tamils in the North and

<sup>50</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and the Northern Province-7 December 2012, Introduction](#)

<sup>51</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and the Northern Province- 7 December 2012 2.1 Colombo](#)

<sup>52</sup> [International Crisis Group, Sri Lanka’s Authoritarian Turn: The Need for International Action, 20 February 2013](#)

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<sup>53</sup> [Amnesty International: Sri Lanka’s Assault on Dissent, 30 April 2013, Arrest in Jaffna following student protests, page 43.](#)

East because their ethnicity could indicate possible proximity to the LTTE. There are even suspicions directed at Tamils with a low profile, who do not escape surveillance. The authorities check whether these people may be in contact with the Diaspora. This is especially the case of those who were recruited, whether or not by force, by the LTTE. The authorities also extend their suspicions to acquaintances and relatives of former members of the LTTE. According to several reports, people who return from abroad are often suspected of maintaining links with the LTTE and are particularly threatened.”<sup>54</sup>

**3.9.16** As regards “scarring” the British High Commission (BHC), Colombo observed in the letter of 5 January 2012: “There is strong anecdotal evidence that scarring has been used in the past to identify suspects. Previous conversations with the police and in the media, the authorities have openly referred to physical examinations being used to identify whether suspects have undergone military style training. Contacts in government ministries suggest that this practice has either ceased or is used less frequently. At the very least it appears that the security forces only conduct these when there is another reason to suspect an individual, and are not looking for particular scars as such, but anything that may indicate the suspect has been involved in fighting and/or military training. There is no recent evidence to suggest that these examinations are routinely carried out on immigration returnees.”<sup>55</sup>

**3.9.17** The Freedom from Torture report *Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka*, released on 7 November 2011, noted that high levels of scarring [based on a data set of ‘35 medico-legal reports (MLRs) prepared by Freedom from Torture clinicians in relation to clients, most of whom are asylum seekers or refugees’ in the UK] could reflect a policy of permanently ‘branding’ victims not only to inflict long-term psychological and physical damage, but also to ensure that the individual may be easily identified in future as having been suspected of links to the LTTE.<sup>56</sup>

**3.9.18** In its report “Returnees at Risk: Detention and Torture in Sri Lanka, Tamils Against Genocide (TAG) state “The topics of interrogation under torture featured in the sampled cases [based on the analysis of 26 allowed appeals of Tamil asylum seekers who returned voluntarily to Sri Lanka] show a significant interest in political activity in London, including protests. Increased surveillance by Sri Lankan embassies abroad is primarily done through photographs and videos. At least five of our determinations found that appellants had been shown photos of protests including photos of themselves at the protests and/or photos of their other activities. Other direct evidence available to TAG corroborates the considerable photographic evidence held by the Sri Lankan government. This evidence of surveillance of political activity supports our view that the acquisition of, and investment in, costly technology with the support of international donors is indicative of the increased paranoia of the state towards any form of political dissent”.<sup>57</sup>

**3.9.19** In its annual report for 2012, Human Rights Watch report that “Tamils who returned to Sri Lanka, including deported asylum seekers, reported being detained and accused of having links to the LTTE or taking part in anti-government activities abroad. A number reported being tortured by the Central Intelligence Department

<sup>54</sup> [Swiss Refugee Council: Adrian Schuster: Sri Lanka- current situation, 15 November 2012, 4.4 Profile of at risk groups, 4.4 Tamils in the North and East.](#)

<sup>55</sup> [Country Origin Information Service: British High Commission Colombo, letter dated 5 January 2012 Annex E: Sri Lanka country report March 2012](#)

<sup>56</sup> [Country of Origin Information Service: Sri Lanka country report March 2012 \(para 25.54\)](#)

<sup>57</sup> [Tamils Against Genocide: Returnees at Risk: Detention and Torture in Sri Lanka, 16 September 2012](#)

and other security forces”.<sup>58</sup> In September 2012, Freedom from Torture issued a briefing on 24 cases it had identified of Sri Lankan Tamils tortured in Sri Lanka after they had returned voluntarily from the UK following the end of the civil war and who subsequently managed to return to the UK. The report noted that “It is a combination of both residence in the UK and an actual or perceived association at any level with the LTTE which places individuals at risk of torture and inhuman and degrading treatment in Sri Lanka.”<sup>59</sup>

**3.9.20** The UNHCR eligibility guidelines report that “sources have reported recent cases of former Sri Lankan (in particular Tamil) asylum-seekers who were allegedly detained and ill-treated or tortured after having been forcibly returned to Sri Lanka upon rejection of their asylum claims or who voluntarily returned to Sri Lanka. There is no systematic monitoring after arrival in Sri Lanka of the treatment of Sri Lankans who were forcibly returned”.<sup>60</sup> Tamils Against Genocide reported that “As of the 4th of February 2013 there were a total of 99 allegations collated by the three NGOs of detention and torture of Tamils returning to Sri Lanka from Europe, voluntarily or involuntarily after May 2009. The vast majority of cases are supported by expert medical reports. Of the 99 allegations of returnee torture, the vast majority (over 86) relate to persons returning from the United Kingdom. This is because most of the data was collected in the UK”.<sup>61</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.9.21 Conclusion:** The Tribunal in GJ & Others (post –civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) [see section 2.4 – Caselaw] did not accept the submission that all Tamils are at risk on return” (paragraph 337). Consequently being of Tamil ethnicity would not in itself normally warrant international protection.

**3.9.22** The Tribunal concluded 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)).

<sup>58</sup> [Human Rights Watch, World Report 2013, 31 January 2013](#)

<sup>59</sup> [Freedom From Torture, Sri Lankan Tamils tortured on return from the UK, 13 September 2012](#)

<sup>60</sup> [UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka 21 December 2012](#) II. Main developments in Sri Lanka, A.2 Return of Refugees and Failed Asylum- seekers

<sup>61</sup> [Tamils Against Genocide, How Many Cases of torture of Tamils Returning to Sri Lanka from the UK do we know of ? 26 February 2013](#)

The Tribunal then identifies amongst its “categories at risk” –

1. “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)); and
2. “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)].

The Tribunal added in its general findings that “The GOSL is reasonably confident that there is a low risk of resurgence of the internal armed conflict from within Sri Lanka. Its concern is with the risk of resurgence coming from the Diaspora, of which London, Paris, Toronto and Oslo are major centres (‘the Diaspora hotspots’)” (paragraph 303).

**3.9.23** The Tribunal also stated as part of its general findings that:

- During the re-documentation process in the UK, or at the airport on return, a forced returnee can expect to be asked about his own and his family’s LTTE connections and sympathies (paragraph 308).
- “The government’s concern now is not with past membership or sympathy, but with whether a person is a destabilising threat in post-conflict Sri Lanka” (paragraph 311).
- It is not established that previous LTTE connections or sympathies (whether direct or familial), are perceived by the GOSL as indicating now that an individual poses a destabilising threat in post-conflict Sri Lanka” (paragraph 325).
- “Our overall conclusion regarding Diaspora activities is that the GOSL has sophisticated intelligence enabling it to distinguish those who are actively involved in seeking to revive and re-fund the separatist movement within the Diaspora, with a view to destabilising the unitary Sri Lankan state. Attendance 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).
- “We do not consider that post-rehabilitation monitoring alone rises to the level of persecution” (paragraph 319).

**3.9.24** Caseworkers must be satisfied that individuals claiming they are involved in Tamil separatist movements are able to produce sufficient detail to demonstrate that their activities would have brought them not only to the adverse attention of the Sri Lankan Government, but also that they are perceived to be a present risk to the unitary Sri Lanka state or the Sri Lankan Government. As the Tribunal identified in GJ & Others attendance at demonstrations in itself is not adequate evidence. If sufficient evidence is produced, then a grant of refugee status would be appropriate on the grounds of perceived or actual political opinion.

**3.9.25** The Tribunal in GJ & Others indicated that it “had not considered whether asylum claims are being asserted in the United Kingdom based on self scarring, or scarring inflicted at an appellant’s request, in the UK, Sri Lanka or elsewhere. The Upper Tribunal has identified another appeal where that issue may be relevant” (paragraph 51). In considering scarring caseworkers should consider this in the context of the medical evidence produced and the general credibility of the claim.

**3.9.26** The Tribunal did note “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).

**3.9.27** The LTTE are a terrorist organisation proscribed under UK legislation. If it is accepted that an applicant was actively involved in serious human rights abuses as part of the LTTE and / or a paramilitary group, some of which might amount to war crimes or crimes against humanity, then caseworkers should consider whether any of the exclusion clauses are applicable. Such cases should always be referred to a senior caseworker. Guidance on Article 1F can be found in the asylum instruction on: Exclusion – Articles 1F and 33(2) of the Refugee Convention. The Tribunal in GJ & Others emphasised the need to consider whether the exclusion clauses are engaged and that “Regard should be had to the categories for exclusion set out in the “Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka”, published by UNHCR on 21 December 2012” (paragraph 356 (10)).

### **3.10 Fear of persecution by the Liberation Tigers of Tamil Eelam (LTTE)**

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

**3.10.2 Treatment.** On 19 May 2009 the Government of Sri Lanka announced the military victory over the Liberation Tigers of Tamil Eelam (LTTE) following a 26 year long internal conflict. Over this period at least 70,000 people are estimated to have been killed and some one million displaced. Towards the end of the fighting, high numbers of civilians are believed to have been killed and injured as a result of the heavy fighting. There was no independent access to the conflict zone and international concern has been raised about the conduct of hostilities by both sides in the final months of the conflict.<sup>62</sup>

**3.10.3** A UN report by a panel of international experts stated that the LTTE killed many people and shot those who tried to flee the conflict. They also kept civilians hostage as ‘human shields’ and sited artillery and munitions dumps near to refugee and civilian sites such as hospitals, while also conducting suicide attacks that targeted civilians. Among other human rights violations by the LTTE, the experts mentioned the use of forced labour and child soldiers.<sup>63</sup>

**3.10.4** The Sri Lankan security forces and the LTTE repeatedly violated international humanitarian law during the last five months of their 30 year civil war. Although both sides committed atrocities throughout the many years of conflict, the scale and nature of violations particularly worsened from January 2009 to the government’s

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<sup>62</sup> [Home Office Country of Origin \(COI\) report, Sri Lanka, 7 March 2012, para 3.21/3.24](#)

<sup>63</sup> [Home Office Country of Origin Report, Sri Lanka, 7 March 2012 : para 3.51](#)

declaration of victory in May. There is evidence of war crimes committed by the LTTE and its leaders as well, but most of them were killed and will never face justice.<sup>64</sup> The South Asia Terrorism Portal (SATP) list of LTTE leaders killed during encounters with security forces in Sri Lanka, 2001-2009 provides comprehensive information on the LTTE leaders killed during the last weeks of the war.<sup>65</sup>

**3.10.5** The International Crisis Group (ICG) reported in December 2010 that “of the estimated 12,000 people who surrendered or were detained at the end of the war on suspicion of involvement with the LTTE, many, perhaps most, have now been released”.<sup>66</sup> Following their crushing military defeat, there has been no sign of renewed LTTE militancy. The killing of virtually the entire political and military leadership, combined with the August 2009 arrest of the LTTE’s international leader, and would-be successor to Prabhakaran, S. Pathmanathan, or K.P, has crippled the organisation.<sup>67</sup> A February 2010 ICG report on the Sri Lankan Tamil Diaspora considered that there was little chance of the LTTE regrouping in the Diaspora, with new organisations forming in more transparent and democratic ways.<sup>68</sup>

**3.10.6** A letter from the British High Commission dated 9 November 2011 stated that following the end of the civil conflict in Sri Lanka on 18 May 2009 the government of Sri Lanka approached International Organization for Migration (IOM) to look at an operational programme for rehabilitation and reintegration of ex-combatants in the north of the country. The Sri Lankan Ministry of Defence was given direct responsibility for Disarmament, Demobilisation and Reintegration (DDR). The detained cadres were split into three specific groups:

- Active LTTE members who have been served with detention orders under the Emergency Regulations and are to be charged with offences. These are believed to currently number around 1,400, although that figure may include others held previously under the emergency powers.
- Former LTTE cadres who may be held in Protective Accommodation and Rehabilitation Centres (PARC) and who may remain there for an indeterminate period of between six months and one year. It was believed that initially, many of these were children.
- Those with low level LTTE involvement and were believed to number between 3,000- 4,000. These would be released and receive community reintegration.<sup>69</sup>

**3.10.7** The BHC letter went on to state that in press releases by the Rehabilitation & Prison Reforms Minister D E W Gunasekera in October 2010, and by the Commissioner General of Rehabilitation (CGR), Brigadier Susantha Ranasinghe in January 2011, they both stated that the total number of LTTE cadres that had been detained at the end of the war was 11,696. Those with low level LTTE involvement were released in batches.<sup>70</sup>

**3.10.8** “In September 2011 the government released the last batch of some 1,800 former LTTE guerrillas who underwent rehabilitation. The release ceremony for the former Tamil Tigers was held at President Mahinda Rajapaksa’s official residence in the

<sup>64</sup> [Home Office Country of Origin Report, Sri Lanka 7 March 2007, para 3.27](#)

<sup>65</sup> [Home Office Country of Origin Report, Sri Lanka 7 March 2007, para 3.29](#)

<sup>66</sup> [International Crisis Group: Human Rights in Sri Lanka in the Post-Conflict Period, 6 December 2010](#)

<sup>67</sup> [International Crisis Group, Sri Lanka: A Bitter Peace, 11 January 2010](#)

<sup>68</sup> [International Crisis Group, The Sri Lankan Diaspora after the LTTE 23 February 2010](#)

<sup>69</sup> [Home Office Country of Origin Report, Sri Lanka, 7 March 2012, para 3.40](#)

<sup>70</sup> [Home Office Country of Origin Report, Sri Lanka, 7 March 2012, para 3.40](#)

presence of the Colombo- based diplomatic community. The former Tamil Tiger guerrillas were among about 11,000 LTTE fighters who underwent vocational training in military-run rehabilitation centres after they surrendered following the end of the civil war in May 2009. They were allowed to reunite with the families having gone through the process where they were taught self employment skills and English language training. Officials said there are over a thousand more former Tamil Tigers who have been sent for rehabilitation as a result of the court procedure. They will be released only after the legal process".<sup>71</sup>

**3.10.9** The US State Department's Human Rights (HR) Sri Lanka report for 2012 states "Of the approximately 11,600 LTTE combatants who surrendered at the end of the war, reports indicated that 11,000 were rehabilitated and released and approximately 600 remained in rehabilitation centres. Of the 700 hardcore former combatants considered by authorities to be potentially criminal liable, many were transferred to the criminal justice system during the year [2012], while a smaller number were transferred from detention facilities to rehabilitation centres during the year for rehabilitation and release".<sup>72</sup> In their Sri Lanka report of December 2012 on Tamils in Colombo and the Northern Province Landinfo observe "the majority of the approximately 13,000 who were detained in rehabilitation camps have been released. Their return to their places of origin (in the Vanni and Jaffna) has not created serious security and human rights-related problems. There are few records of re-arrests of individuals released from the rehabilitation camps".<sup>73</sup>

**3.10.10** Landinfo considers that re-arrests are currently not perceived as a problem area. This assessment is shared by a knowledgeable and reliable international source, which points out that, despite the fact that the rehabilitated are monitored intensely, few are re-arrested; "there seem to be isolated cases of re-arrest". The vast majority of those who have left the camps have thus been released. According to a presumably well-informed international organisation, there are fewer than a thousand left in the rehabilitation camps ("between six and seven hundred"). The second group who have left the camps is that of those who were detained under the Prevention of Terrorism Act (PTA), for instance, referred to criminal proceedings. The information suggests that the majority were transferred to the PTA in the first two years after the ending of the war. Just after the war, the average number of PTA detainees was over 500. Several interlocutors mentioned that those still in the rehabilitation camps were "the hard core among the members" and believed that most would probably not be released, but prosecuted under the PTA.<sup>74</sup>

Tamil paramilitary groups

**3.10.11** The Swiss Refugee Council reported "The EPDP (Eelam People's Democratic Party) in the North and the TMVP (TamilMakkal Viduthalai Pulikal) in the East are registered political parties maintaining an armed wing. According to indications from the International Crisis Group, the EPDP is preventing the development of serious political resistance against the government in Jaffna, Vavuniya and Mannar. In Colombo, its activities are limited. In the East of the country, the TMVP is divided into two active groups in the areas of Batticaloa, Trincomalee and Ampara. The Karuna group remains armed and takes an aggressive stance towards those who resist the ruling party (the SLFP).The EPDP and TMVP are responsible for murder,

<sup>71</sup> [The Times of India, Lanka releases 1,800 ex LTTE guerrillas after rehabilitation 30 September 2011](#)

<sup>72</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 1: Respect for the Integrity of the Person, including Freedom from: d Arbitrary Arrest or Detention](#)

<sup>73</sup> [LandInfo: Sri Lanka: Human rights and security issues concerning the Tamil population in Colombo and the Northern Province: 7 December 2012: Summary / Introduction.](#)

<sup>74</sup> [Landinfo report 2012: Sri Lanka Human Rights and security issues in respect of the Tamil population in Colombo and the Northern Province- Rearrest of LTTE members](#)

abductions and extortion; with recent cases pertaining to active members of Tamil civil society who have been abducted, threatened and tortured by the EPDP in Jaffna. Aside from political motives, purely criminal intent seems also significant. The EPDP and groups from the TMVP extort from the rich, no matter what their ethnicity. The activities of the EPDP and TMVP are often covered up or supported by public security forces and are rarely subject to legal proceeding”.<sup>75</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

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

**3.10.13** The Tribunal in the country guidance case of GJ & Others (post –civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) [see section 2.4 – Caselaw] concluded that “The LTTE was crushed and within Sri Lanka is now a spent force. There have been no terrorist incidents since the end of the civil war” (paragraph 297).

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

**3.10.15** The LTTE are a terrorist organisation proscribed under UK legislation. If it is accepted that an applicant was actively involved in serious human rights abuses as part of the LTTE and / or a paramilitary group, some of which might amount to war crimes or crimes against humanity, then caseworkers should consider whether any of the exclusion clauses are applicable. Such cases should always be referred to a senior caseworker. Guidance on Article 1F can be found in the Asylum Instruction on: Exclusion – Articles 1F and 33(2) of the Refugee Convention. The Tribunal in GJ & Others emphasised the need to consider whether the exclusion clauses are engaged and that “Regard should be had to the categories for exclusion set out in the “Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka”, published by UNHCR on 21 December 2012”.

### **3.11 Opposition Politicians and Political Activists**

**3.11.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Sri Lankan authorities due to opposition political activity.

**3.11.2** This section is to be read in conjunction with 3.9: Tamils, in particular those suspected of links to the Liberation Tigers of Tamil Eelam (LTTE) and 3.12

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<sup>75</sup> [Adrian Schuster: Sri Lanka: current situation, 15 November 2012.3.2 Tamil paramilitary groups.](#)



## Treatment of Journalists / Media Professionals and Human Rights Activists (re LLRC)

- 3.11.3 Treatment.** The US State Department in its Country Report on Human Rights Practices, 2012, Sri Lanka states “The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic elections held on the basis of universal suffrage”.<sup>76</sup> Freedom House, in its Freedom in the World report for Sri Lanka of 2013, states “Sri Lanka is not an electoral democracy. The 1978 constitution vested strong executive powers in the president, who is directly elected for six-year terms and can dissolve Parliament. The prime minister heads the leading party in Parliament but has limited powers. The 225 member unicameral legislature [having only one legislative chamber] is elected for six-year terms through a mixed proportional-representation system. In the January 2010 presidential election, monitoring groups alleged inappropriate use of state resources—particularly transport, infrastructure, police services, and media—to benefit the incumbent, in violation of orders issued by election officials. More than 1,000 incidents of violence, including at least four deaths, were reported in the pre-election period. In the northern and eastern provinces, inadequate provisions for transport and registration of IDPs contributed to a low turnout. Election officials’ orders were similarly disregarded prior to the April 2010 parliamentary elections, which also featured extensive misuse of state resources”.<sup>77</sup>
- 3.11.4** The US State Department in its Country Report on Human Rights Practices, Sri Lanka, reinforces this adding “The government is dominated by the president’s family; two of the president’s brothers hold key executive branch posts as defence secretary and minister of economic development, while a third brother is the speaker of parliament. A large number of other relatives, including the president’s son, also serve in important political or diplomatic positions. Independent observers generally characterised the presidential, parliamentary, and local elections as problematic. Elections were fraught with violations of the election law by all major parties and were influenced by the governing coalition’s use of state resources”.<sup>78</sup>
- 3.11.5** Political parties largely were free to operate, organise, contest elections, seek votes, and name candidates as they wished. Trusted ruling party stalwarts allegedly received favouritism for high-ranking government and business positions. There were no laws that prevented women or minorities from participating in political life on the same basis as men or non-minority citizens. Some cultural and social barriers to women’s participation included financial constraints and the violent nature of local politics, which often is linked through patronage to the drug trade, local thugs, and other nefarious elements. There was no provision for, or allocation of, a set number or percentage of political party positions for women or minorities. There were 13 women in the 225 member parliament, two female ministers, and three women out of 11 justices on the Supreme Court, including Chief Justice Shirani Bandaranayake. There were 27 Tamils and 18 Muslims in the parliament.<sup>79</sup>
- 3.11.6** “Corruption and general mismanagement were common --. Until the controversial 2012 impeachment of Chief Justice Shirani Bandaranayake, no high-ranking official

<sup>76</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 3: Respect for Political Rights: The Right of Citizens to change their Government.](#)

<sup>77</sup> [Freedom House Freedom in the World 2013: Sri Lanka: Political Rights & Civil Liberties, January 2013](#)

<sup>78</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Executive Summary](#)

<sup>79</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 3: Respect for Political Rights: The Right of Citizens to change their Government:: Elections & Political Participation.](#)

or politician had been prosecuted for corruption or abuse of power while serving in office. Nepotism and cronyism continued to be a concern, and trusted ruling-party stalwarts allegedly received favoured consideration for high-ranking government and business positions. Corruption watchdogs claimed that corruption reached the highest levels of government. There is no law providing for public access to government information".<sup>80</sup> The International Crisis Group reports that "Government attacks on the judiciary and political dissent have accelerated Sri Lanka's authoritarian turn and threaten long-term stability and peace. The government's politically motivated impeachment of the chief justice reveals both its intolerance of dissent and the weakness of the political opposition".<sup>81</sup>

**3.11.7** The FCO in its 2012 HR & Democracy report states "Leaders of the new Frontline Socialist Party were abducted by an unidentified group on 7 April [2012] and subsequently released. On 15 June [2012], 10 men armed with machine guns attacked an opposition JVP (People's Liberation Front) party rally in Hambantota, killing two people. The organisers blamed pro-government elements."<sup>82</sup>

**3.11.8** Amnesty International (AI) introducing its report "Sri Lanka's Assault on Dissent" stated on its web site "The Sri Lankan Government is intensifying its crackdown on critics through threats, harassment, imprisonment and violent attacks. Journalists, the judiciary, human rights activists and opposition politicians are among those, who have been targeted in a disturbing pattern of government-sanctioned abuse, often involving the security forces or their proxies."<sup>83</sup> In their report AI state "violent repression of dissent and consolidation of political power go hand in hand in Sri Lanka. Since taking office in 2005, the Rajapaksa Government has tightened its grip on power by targeting people in civil society at all levels it believes have influence with a certain community, institution or political circle; or have information that could damage someone's hold on power. At the national level state repression has been directed at prominent politicians and journalists, activists, lawyers, influential businessmen and academics; but many victims of state repression in Sri Lanka are unknown outside their own local communities: they are university students, humanitarian workers, parents protesting the enforced disappearance of their children".<sup>84</sup> Opposition political activists and less prominent community activists organizing locally have reportedly been subjected to threats and intimidation, physical attacks, arrest, repeated interrogations and enforced disappearance. Such attacks have been carried out with impunity: there have been no effective investigations and no prosecution of suspected perpetrators. One of the holdovers from Sri Lanka's armed conflict is a security regime that criminalizes freedom of expression, and an official attitude that equates dissent with treason. Sri Lankan officials and state-owned media employ the term "traitor" with alarming frequency against detractors, often threatening death or injury to the person accused".<sup>85</sup>

**3.11.9** The same report notes "The end of the armed conflict has brought new political players to the stage seeking to appeal to new constituencies beyond traditional ethnic and regional lines. This development appears to have worried powerful political forces intent on retaining the status quo. At the same time, there remain

<sup>80</sup> [US State Department : Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 4 Corruption and Lack of Transparency in Government.](#)

<sup>81</sup> [International Crisis Group, Sri Lanka's Authoritarian Turn: The Need for International Action, 20 February 2013](#)

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<sup>82</sup> [UK Foreign & Commonwealth Office \(FCO\) 2012 Human Rights & Democracy report: April 2013: Countries of Concern: Sri Lanka.](#)

<sup>83</sup> [Amnesty International: Sri Lanka: Report exposes the Government's violent repression of dissent, 30 April 2013.](#)

<sup>84</sup> [Amnesty International: Sri Lanka's assault on dissent, 30 April 2013: Conclusion, page 50](#)

<sup>85</sup> [Amnesty International: Sri Lanka's assault on dissent, 30 April 2013: Introduction, page 7](#)

plenty of political actors with traditional ethnic and political affiliations (that is, parties organized along traditional ethnic lines such as the Tamil National Alliance, or members of older opposition parties like the United National Party) who have been attacked for holding opposing views. On 7 April 2012, Frontline Socialist Party (FSP) leaders Premakumar Gunarathnam and Dimuthu Attygala were abducted in two separate incidents within hours of each other, on the eve of the party's launch. They were both released on 10 April. Guranathnam said he believed members of the security forces were involved in the kidnapping and that he was sexually tortured in custody. He credited his release to the Australian Government's quick intervention with the Sri Lankan Government. About 5,000 people attended the launch of the FSP, a breakaway party from the Janatha Vimukthi Peramuna (JVP), which has reached out to both Tamils and Sinhalese, including former LTTE members and former JVP members. Lalith Weeraraju and Kugan Maruganandan, political activists with the Movement for People's Struggle (MPS), an outgrowth of the JVP with links to the FSP, have been missing since 9 December 2011".<sup>86</sup>

**3.11.10** Landinfo in its report of December 2012 commenting on freedom of assembly in Vanni and Jaffna states "Several of the representatives of the Tamil National Alliance (TNA) emphasised that it was not possible to conduct ordinary political activity (opposition), either in Vanni or in Jaffna, because freedom of assembly is severely restricted. The party has no activity in Vanni. Several interlocutors reported that the Eelam People's Democratic Party (EPDP), which is part of the coalition, also could not carry out political work in Vanni. A member of parliament claimed that the army had used violence to stop a legal TNA meeting in Alveddy in Jaffna in 2011 as one of several examples of military intervention in legal meetings. With regard to political meetings, there is an undivided consensus that the security regime involves a high risk of problems and even violence".<sup>87</sup>

#### Abductions

**3.11.11** The Landinfo report notes " There was a general agreement among Landinfo's interlocutors in April 2012 about some disturbing trends in Sri Lanka; a marked narrowing of the democratic space, increasing abuse of power as well as corruption and violence. Moreover the connections between established political and criminal groups are becoming closer. Many of the interlocutors considered a growing number of abductions to be a major human rights issue and one of the consequences of this development.<sup>88</sup> Nepotism, corruption and crime have contributed to a general curtailment of basic democratic rights. Over the past year, many critics and political opponents have been abducted.<sup>89</sup> The Asian Human Rights Commission in its 2012 report on Human Rights in Sri Lanka states "Over a long period Sri Lanka has been engaged in the large scale practice of enforced disappearances of persons. In the process, justice has always been denied to the victims and their families. The practice of enforced disappearances amounts to the denial of all rights. This practice, which has gone on for several decades, has had a seriously paralysing influence on the entire system of justice. A tacit policy that the use of abductions may be extended, not only to counter insurgency but also to the suppression of any opposition to the government, has been followed by all recent governments. The most obvious argument against the government on the basis of

<sup>86</sup> [Amnesty International: Sri Lanka's assault on dissent, 30 April 2013: attacks on political activists, page 36.](#)

<sup>87</sup> [LandInfo: Sri Lanka: Human Rights and security issues concerning the Tamil population in Colombo and the Northern Province, 7 December 2012, Section 2 The Government's security regime in different areas: 2.3.2 Freedom of assembly – Vanni and Jaffna.](#)

<sup>88</sup> [LandInfo: Sri Lanka: Human Rights and security issues concerning the Tamil population in Colombo and the Northern Province, 7 December 2012: section 5 Abductions](#)

<sup>89</sup> [LandInfo: Sri Lanka: Human Rights and security issues concerning the Tamil population in Colombo and the Northern Province, 7 December 2012: Introduction](#)

its involvement in abductions is the absence of political will to bring culprits to the book and demonstrate its determination to stop such things from taking place.”<sup>90</sup>

**3.11.12** The US State Department comments “While some killings were criminal acts, others appeared to be politically motivated, targeting persons believed to be critical of the government. For example, on June 15 [2012], a group of men killed two supporters of the opposition party Janatha Vimukthi Peramuna (JVP) at a campaign meeting in Katuwana. Unknown actors suspected of association with pro-government paramilitary groups committed killings and assaulted civilians. There were persistent reports of close ties between pro-government paramilitary groups such as the Eelam People’s Democratic Party (EPDP) and government security forces. Whereas these groups served more of a military function during the war, often working in coordination with security forces, they increasingly took on the characteristics of criminal gangs as they sought to solidify their territory and revenue sources in the post-war environment”.<sup>91</sup> “Enforced and involuntary disappearances continued to be a problem; some abductions included government critics---.The government attempted to impede criticism throughout the year, including through harassment, intimidation, violence and imprisonment”.<sup>92</sup>

#### Demonstrations

**3.11.13** Amnesty International also reports that “Police have used unnecessary and excessive use of force against demonstrators, in breach of international law enforcement standards. In June 2011, thousands of workers in Sri Lanka’s Free Trade Zone demonstrated against a proposed pension plan that would require workers to contribute an additional two per cent of their wages without a guaranteed return. In February 2012, an estimated 300,000 fishermen island-wide protested a fuel price hike. In both instances, police used excessive force against demonstrators, firing live ammunition into crowds, killing and injuring several demonstrators”.<sup>93</sup> The International Crisis Group notes that “There have also been violent attacks by police on peaceful protests in Colombo and elsewhere in the south: military shootings of protesters in Negombo and Colombo in 2012 remain unpunished”.<sup>94</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.11.14 Conclusion:** Individuals influential or perceived to be so, in opposition to the Sri Lankan Government are at risk of persecution by the state.

**3.11.15** The Tribunal in the country guidance case of GJ & Others (post –civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) [see section 2.4 – Caselaw] identified amongst its risk categories – “Individuals who are, or are perceived to be,

<sup>90</sup> [Asian Human Rights Commission: Sri Lanka, 2012, Raid fall into Dictatorship, 10 December 2012, Disappearance of Persons p37 & 44, accessed 19 June 2013](#)

<sup>91</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 1. Respect for the Integrity of the Person, including freedom from: a. Arbitrary or Unlawful Deprivation of Life.](#)

<sup>92</sup> [US State Department ; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013; Section 1. Respect for the Integrity of the Person, including freedom from: b. Disappearance](#)

<sup>93</sup> [Amnesty International: Sri Lanka's assault on dissent, 30 April 2013:](#) The re-emergence of large-scale public protest p.42

<sup>94</sup> [International Crisis Group, Sri Lanka's Authoritarian Turn: The Need for International Action, 20 February 2013 E. Freedom of Expression pl.18](#)

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)] and 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)].

**3.11.16** The Tribunal also concluded that given the tight control the government has over its entire territory, internal relocation for activists within Sri Lanka is not an option [see 2.3.14].

**3.11.17** Caseworkers must be satisfied that individuals claiming persecution on this basis are able to provide sufficient detail to demonstrate that they will be known to the authorities as having been, or perceived to have been, engaged in such activities. A grant of refugee status would then be appropriate on the grounds of perceived or actual political opinion.

### **3.12 Treatment of Journalists/Media Professionals and Human Rights Activists**

**3.12.1** Some applicants may make an asylum and/or human rights claim based on ill treatment amounting to persecution at the hands of the Sri Lankan authorities due to actual or perceived criticism of the government in their roles as journalists or human rights activists.

**3.12.2** This section should be read in conjunction with 3.11 Opposition Politicians and Political Activists.

#### Journalists/ Media Professionals

**3.12.3 Treatment.** “The law provides for freedom of speech, including for members of the press, but the government did not respect these rights in practice. Government officials criticised, pressured, harassed, and arrested members of the media, and most journalists practiced self-censorship. The Lessons Learnt and Reconciliation Commission (LLRC) report stated that it was “deeply disturbed by persistent reports concerning attacks on journalists and media institutions and killing of journalists and the fact that these incidents remained to be conclusively investigated and perpetrators brought to justice. The government attempted to impede criticism throughout the year, including through harassment, intimidation, violence, and imprisonment. For example, state-run media vilified activists and journalists supportive of the March 22 UNHRC resolution on Sri Lanka. State television programs focused on thinly disguised photographs of activists marked as “traitors” and pledged to expose them.”<sup>95</sup>

**3.12.4** The report of the Office of the UNHCHR on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka notes that “in 2012, journalists and media institutions continued to be harassed and attacked. On 29 June, the Criminal Investigation Department raided

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<sup>95</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section 2 Respect for Civil Liberties, including a. Freedom of Speech and Press.](#)

the office of Sri Lanka X News and its sister website, Sri Lanka Mirror; nine staff members were arrested and later released on bail. On 5 July, there was a failed attempt by two men in a white van to abduct the lead investigative journalist (a vociferous critic of the current Government) for Sri Lanka X News. He had reportedly been receiving threats since 2008 for criticizing the government”.<sup>96</sup>

**3.12.5** The UNHCR “Eligibility Guidelines Assessing the International Protection Needs of Asylum Seekers from Sri Lanka” identifies “certain journalists and other media professionals” in their “Risk Profiles”. The guidelines state “Recent reports document, amongst others, cases of harassment, arbitrary detention, threats and physical intimidation of journalists and other media professionals, allegedly perpetrated or condoned by officials or pro-government forces. Media professionals appear to be targeted owing to the topics they cover in their reports, such as government accountability and the rule of law. If these regulations are not adhered to, journalists and media professionals may find themselves at risk”.<sup>97</sup>

**3.12.6** Freedom House in its 2013 Freedom in the World report states “Journalists throughout Sri Lanka, particularly those who cover human rights or military issues, encounter considerable levels of intimidation, which has led over the past several years to increased self-censorship. A number of journalists received death threats in 2011, while others were assaulted”<sup>98</sup> The US State Department in its Human Rights Practices for 2012 report notes for Sri Lanka “National and international media freedom organizations and journalists’ associations expressed concern over restrictions on media freedom and were sharply critical of the government’s role in harassing and intimidating journalists.”<sup>99</sup>

**3.12.7** “Senior government officials repeatedly accused of treason journalists who had done critical stories about the country and its policies and often pressured editors and publishers to print stories that portrayed the government in a positive light. Such pressure reportedly was exerted sometimes directly through threats and intimidation. Although no journalist was reported killed or abducted during the year, frequent threats, harassment, detention, and physical attacks on media personnel continued. Statements by government and military officials contributed to an environment in which journalists who published articles critical of the government felt under threat. On March 23, for example, while addressing a rally against the UNHRC resolution on Sri Lanka, Public Relations and Public Affairs Minister Mervyn Silva threatened to “break the limbs” of some journalists and called them “traitors.” He also claimed responsibility for chasing journalist Poddala Jayantha out of the country in 2009”.<sup>100</sup>

**3.12.8** “The government consistently failed to solve attacks on journalists, such as the 2009 killing of Sunday Leader editor Lasantha Wickrematunge, the 2010 abduction of Prageeth Ekneligoda , and the July 2011 attack on Uthayan news editor Gnanasundaram Kuhanathan . The failure of police to apprehend the perpetrators in such cases further highlighted the high level of impunity in an environment in

<sup>96</sup> [UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka, 11 February 2013, Para 45](#)

<sup>97</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012, section II Eligibility for Protection, A. Risk Profiles, A3 Certain Journalists and Other Media Professionals.](#)

<sup>98</sup> [Freedom House: Freedom in the World, 2013, Sri Lanka: January 2013](#)

<sup>99</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section 2 Respect for Civil Liberties, including a. Freedom of Speech and Press.](#)

<sup>100</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section 2 Respect for Civil Liberties, including a. Freedom of Speech and Press.](#)

which law enforcement possessed widespread powers of detention and surveillance but failed to solve cases of attacks on those critical of the government”.<sup>101</sup>

**3.12.9** In an article on 18 February 2013 Reporters Without Borders stated “Reporters Without Borders and its partner organisation, Journalists for Democracy in Sri Lanka, firmly condemn an attempt to murder Sunday Leader journalist Faraz Shaukatally on the night 15 February, when he was shot and wounded by gunmen inside his Colombo home. This attack comes just weeks after the third anniversary of cartoonist Prageeth Ekneligoda’s disappearance on 24 January 2010, the fourth anniversary of Sunday Leader editor Lasantha Wickrematunga’s murder on 8 January 2009 and the fourth anniversary of an attempt on the lives of Rivira editor Upali Tennakoon and his wife, also in January 2009. Sri Lankan journalists are constantly the targets of threats and reprisals, often by the government. Former Sunday Leader editor Frederica Jansz recently talked to Reporters Without Borders about the violence and impunity that undermines the work of the media and forced her to flee the country. Sri Lanka is classified by Reporters Without Borders as a country “under surveillance” because of its violations of online freedom of expression and is ranked 162nd out of 179 countries in its 2013 press freedom index”.<sup>102</sup>

**3.12.10** The FCO in its 2012 HR & Democracy Report states “In contrast to previous years there were no reported killings of journalists in 2012. There was one attempted abduction and a number of other attacks. There were no conclusive investigations into past incidents ---; police closed the offices of two pro-opposition websites, confiscated computers and documents and arrested nine workers who were subsequently released. In July [2012], the government also announced the imposition of a registration fee for all news-casting websites. Two newspaper reporters from the north said they had received death threats for their reporting of a controversial protest. Media alleged that the Sri Lankan Defence Secretary threatened the editor of a Sunday newspaper during a telephone interview. In December [2012], a pro-opposition journalist was allegedly detained for 13 hours without a stated reason or access to a lawyer. Restrictions on free assembly continued through 2012”.<sup>103</sup>

**3.12.11** The International Crisis Group reports that “in the first six weeks of 2013, two Tamil newspaper distributors in Jaffna were physically assaulted, while a journalist with the Jaffna-based Tamil newspaper Uthayan was badly beaten in December 2012. Uthayan’s editor was forced into exile in mid-2012 after being seriously assaulted. While violence against journalists in the south is less frequent than before, attacks continue: on 15 February 2013, an investigative journalist specialising in corruption issues was shot and seriously wounded. Threats to harm those who challenge or ask difficult questions of the government remain common”.<sup>104</sup>

Human Rights (HR) Activists

**3.12.12** The UNHCR’s “Eligibility Guidelines Assessing the International Protection Needs of Asylum Seekers from Sri Lanka” identifies “Certain Human Rights Activists” in their “Risk Profiles”. The guidelines state “Threats to and attacks against human

<sup>101</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section 1 Respect for the Integrity of the Person, including Freedom from: d Arbitrary Arrest or Detention.](#)

<sup>102</sup> [Reporters Without Borders “Desire to silence outspoken journalists seen in murder attempt, 18 February 2013](#)

<sup>103</sup> [UK Foreign & Commonwealth Office \(FCO\) 2012 Human Rights & Democracy report: April 2013: Countries of Concern: Sri Lanka.](#)

<sup>104</sup> [International Crisis Group, Sri Lanka's Authoritarian Turn: The Need for International Action, 20 February 2013](#)

rights defenders, trade union activists and lawyers have been documented in numerous reports. In a number of incidents, human rights (and opposition) activists were reportedly prevented from participating in peaceful protests, including by being arrested and detained. A human rights defender was reported to have died after having allegedly been mistreated in public by members of the Special Task Force. Retaliation against human rights defenders seeking to make use of UN mechanisms has been reported by different sources. No mass arrests of protestors have been reported in 2012”.<sup>105</sup>

**3.12.13** The UNHCR guidelines also express concern regarding certain witnesses of human rights violations and HR victims seeking justice stating “Observers have expressed concern over the absence of an effective mechanism to ensure the protection of and assistance to witnesses and victims of human rights violations and abuses. The UN committee against torture expressed concern in its November 2011 Concluding Observations about impunity in the cases of attacks, including against witnesses. Persons seeking justice after mistreatment by the police have reportedly been harassed and received threats, in an attempt to make them withdraw their cases. In August 2012, a complainant of a human rights violation was reportedly arrested and tortured by the police in Negombo. Before and during the session of the UN Human Rights Council (HRC) in Geneva in March 2012, harassment and intimidation of human rights defenders, activists and non government organisation (NGO) workers engaging with the HRC process were reported by different sources. A bill on witness and victim protection has been on the parliamentary agenda since 2007 and was reintroduced in 2008, but no progress has been made towards its adoption. Witnesses have reportedly been photographed by members of the security forces during LLRC sessions. In Jaffna, witnesses have reportedly been threatened by armed men.”<sup>106</sup>

**3.12.14** The US State Department reported in its 2012 Country Report on Human Rights Practices: Sri Lanka “State-run media led a widespread campaign against human rights defenders, particularly those engaged with UN processes, including the 19th session of the UNHRC beginning in February in Geneva. Press freedom activists and organizations, human rights defenders, and political activists were accused in the media of being part of a conspiracy against the country by bringing the ongoing violations of human rights in the country to the attention of the international community. Throughout January the state-run Independent Television Network repeatedly broadcast footage of press freedom activists participating in protest campaigns during the September 2011 UNHRC sessions. The broadcasts alleged that the activists were associated with or had sympathy for the LTTE and claimed some were paid by LTTE remnants”.<sup>107</sup> The same report states one of the major human rights problems in Sri Lanka in 2012 was attacks on harassment of civil society activists. The government often criticized local NGOs critical of government actions, failed to respond to requests for assistance, and put pressure on those that sought such assistance. There was particular scrutiny of organisations critical of the government on issues such as governance, transparency, and human rights. For example, on October 15, posters appeared around Colombo vilifying civil society think tank Centre for Policy Alternatives Director Paikiasothy Saravanamutthu. The think tank had filed fundamental rights petitions against the Divineguma Act in the

<sup>105</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012, section II Eligibility for Protection, A. Risk Profiles, A4 Certain Human Rights Activists.](#)

<sup>106</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012, section II Eligibility for Protection, A. Risk Profiles, A5 Certain Witnesses of Human Rights Violations and Victims of Human Rights violations seeking justice.](#)

<sup>107</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section 2 Respect for Civil Liberties, including a. Freedom of Speech and Press.](#)



Supreme Court, which sought to give the Ministry of Economic Development responsibilities that constitutionally belonged to the provincial councils.<sup>108</sup>

- 3.12.15** “The Human Rights Commission of Sri Lanka (HRCSL) has jurisdiction to inquire into human rights violations. After an allegation is established, the HRCSL may make a recommendation for financial compensation to the victim; refer the case for disciplinary action or to the attorney general for prosecution, or both. The Investigation and Inquiry Division of the HRCSL recorded 4,075 complaints by the end of 2011, 1,122 of which did not fall within the mandate of the commission. Statistics for 2012 were not published at the end of the year. Observers expressed concerns with the HRCSL’s lack of independence and transparency, particularly with the passage of the 18th amendment, which grants greater power to the president to oversee HRCSL appointments”.<sup>109</sup>
- 3.12.16** The FCO in its 2012 HR & Democracy Report “Serious human rights violations including intimidation of human rights defenders continued in 2012. Those with dissenting views and working with international mechanisms were often portrayed as “traitors”, including through poster campaigns and in state-owned media. Some human rights defenders also received death threats. During the March Human Rights Council session in Geneva, there were serious and credible accusations that the Sri Lankan delegation had been harassing and intimidating human rights defenders, and a government minister threatened to “break the limbs” of those who betrayed the country. Reports of enforced disappearances continued in 2012. Victims came from a range of ethnic groups and included human rights workers as well as businessmen and alleged criminals. Campaigners blamed pro-government groups and security forces. They alleged government responsibility. In August, there was an attempt to abduct a journalist in Colombo. There was no progress in the investigation into the 2011 disappearance of campaigners Lalith Kumar Weeraratne and Kugan Murugan in Jaffna.”<sup>110</sup>
- 3.12.17** A Swiss Refugee Council report of November 2012 “Sri Lanka: current situation” notes “Throughout the country and especially in the North, the security forces and paramilitary groups close to the government use harassment, threats and attacks in an attempt to muzzle criticisms of the government, especially if they emanate from opponents or defenders of human rights, or the denunciation of war crimes by the army. Priests, lawyers and NGO workers who have frequent contact with foreigners are the victims of threats and acts of repression. A Tamil priest who holds a legal advice centre for the Tamil population of Jaffna and who criticised the government in an interview given during summer 2012 to the Washington Post had to go into hiding following serious threats from the EPDP. His female co-worker was abducted and tortured”.<sup>111</sup>
- 3.12.18** Amnesty International reports in April 2013 that “For many years, government repression of dissent in Sri Lanka focused on silencing those who opposed the way the war was fought, particularly those who were critical of violations of international humanitarian law by the Sri Lankan forces. Members of the security forces and government-allied paramilitaries have arrested, threatened and killed critical

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<sup>108</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013](#) Executive Summary and Section 5

<sup>109</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka, 19 April 2013: Section 5: Governmental Attitude regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights: Government HR Bodies](#)

<sup>110</sup> [UK Foreign & Commonwealth Office \(FCO\) 2012 Human Rights & Democracy report: April 2013: Countries of Concern: Sri Lanka.](#)

<sup>111</sup> [Adrian Schuster: Sri Lanka: current situation, 15 November 2012; 4.4.3 Opponents and defenders of human rights.](#)

journalists, and used intimidation and violence to silence witnesses to government violations”.<sup>112</sup>

### 3.12.19 Internet

The government restricted access to the internet, including web sites it deemed pornographic as well as web sites it deemed critical of the government. On June 29 [2012], the CID raided the offices of independent news web site Srilankamirror and official opposition United National Party (UNP) news web site Srilankaxnews. During the raid CID officers arrested eight journalists for writing negatively about the government and president and for allegedly publishing false information. The government blocked Internet access to several Tamil news web sites, including the pro-LTTE TamilNet. Since 2011 the Ministry of Mass Media and Information has required all web sites carrying local news to register with the government. The ministry blocked access based on complaints about material published by certain web sites that was “injurious to the image of the country, the head of the state, ministers, senior public officials, and other important persons.” Thereafter, the ministry blocked five web sites; four of these remained blocked at the end of the year [2012], with five additional sites also blocked. In addition the government blocked various other news web sites throughout the year.<sup>113</sup>

**3.12.20** In July 2012, the government announced new regulations to monitor and control websites that publish anything the government deems to be news. Under revisions to the Press Council Act being approved by the cabinet but not yet law, the punishments for anyone found by the government to have misused the sites would be severe. Numerous websites critical of the government remain blocked for Sri Lankan readers. In June 2012, the offices of two news sites associated with the UNP were raided and temporarily closed and charges filed against the staff. The charges were later dropped after widespread national and international protest, though court proceedings are ongoing. The government continues to resist calls, including from the LLRC, to enact a right to information bill.<sup>114</sup>

#### Commission on Lessons Learnt & Reconciliation

**3.12.21** In 2010 the government established the Lessons Learned and Reconciliation Commission (LLRC) to inquire into the breakdown of the cease-fire with the LTTE and report on lessons learned. The report was tabled in parliament in December 2011. The LLRC report made observations and recommendations for government action on issues related to the breakdown of the ceasefire agreement, security forces operations during the final stages of the war, international humanitarian law, human rights, land, restitution, and reconciliation. It acknowledged important grievances that contributed to the war. Many international and civil society groups found that the report made important recommendations for government action to address serious political, cultural, social, and human rights concerns. Many international and national observers stated that the LLRC did not adequately address accountability for alleged war crimes committed by the government and the LTTE during the final months of the conflict and that the LLRC report exonerated the government of any wrongdoing. On July 26, the government released a national action plan to implement 120 of the 167 recommendations contained in the LLRC report. The plan identifies activities, actors, and time frames for implementation, with time periods up to 36 months. Civil society organizations criticized the plan for

<sup>112</sup> [Amnesty International: Sri Lanka's assault on dissent, 30 April 2013](#): Introduction, page 7

<sup>113</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section 2 Respect for Civil Liberties, including a. Freedom of Speech and Press, Internet Freedom.](#)

<sup>114</sup> [International Crisis Group, Sri Lanka's Authoritarian Turn: The Need for International Action, 20 February 2013](#)

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its reliance on internal mechanisms for investigations rather than independent bodies and deferral of fundamental issues to a parliamentary select committee that had yet to be established. The government appeared to make the most significant progress during the year on recommendations relating to language issues. There was little if any progress on recommendations relating to issues of international humanitarian law, human rights, and press freedom concerns.<sup>115</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.12.22 Conclusion:** Journalists, media professionals and human rights activists perceived by the Sri Lankan Government to be in active opposition to the authorities are at risk of ill treatment, amounting to persecution, by the state.

**3.12.23** The Tribunal in the country guidance case of GJ & Others (post –civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) [see section 2.4 – Caselaw] concluded in its “ current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise include (1) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government” and (2) 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 (7b and c).

**3.12.24** The Tribunal also concluded that given the tight control the government now has over its entire territory, internal relocation is not an option [see 2.3.14].

**3.12.25** Caseworkers must be satisfied that individuals claiming persecution on these grounds are able to provide sufficient detail to demonstrate that they will be known to the authorities as having been, or perceived to have been, engaged in such activities. A grant of refugee status would then be appropriate on the grounds of perceived or actual political opinion.

### **3.13 Women**

**3.13.1** Some women applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Sri Lankan authorities on the grounds of gender-based persecution (where the type of harm is related to their gender).

**3.13.2 Treatment.** The US State Department’s “Country Report on Human Rights Practices 2012: Sri Lanka” states that “the law prohibits discrimination based on race, gender, disability, language, or social status, and the government generally

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<sup>115</sup> [US State Department; Country Reports on Human Rights Practices for 2012; Sri Lanka; 19 April 2013, section 5 Governmental Attitude regarding International and Nongovernmental investigation of Alleged Violations of Human Rights, Government Human Rights Bodies.](#)

respected these rights in practice; however, there were instances where gender and ethnic-based discrimination occurred".<sup>116</sup> "Rape in Sri Lanka is prohibited by Chapter XVI of the Penal Code. Marital rape is not in general a criminal offence under the Penal Code as amended (1995) except in the case where the spouses are separated under a court order. The Prevention of Domestic Violence Act was enacted in 2005. This Act provides for the issue of Protection Orders (POs) where acts of domestic violence has been committed or is envisaged. An act of domestic violence is defined in the widest terms to include physical abuse and emotional abuse.<sup>117</sup> The law prohibiting rape and domestic violence is not enforced effectively. Sexual assault, rape, and spousal abuse were pervasive societal problems. Sexual harassment is a criminal offense carrying a maximum sentence of five years in prison.<sup>118</sup> Women in Sri Lanka have the same rights as men to vote in all elections, to be elected and to participate in the political and public life; however, this has not translated into equal political representation. The Asian Development Bank reports that Sri Lanka has a number of labour laws that give women and men equal rights. However, observance of these laws depends on self-regulation by employers and the efficacy of labour inspectors. Despite labour inspection procedures, women still suffer from weak and inconsistent monitoring and enforcement of laws concerning wage equality, occupational health, and labour standards".<sup>119</sup>

**3.13.3** The Foreign & Commonwealth Office (FCO) reports in its 2012 HR & Democracy report that "In 2012, Sri Lanka slipped down to 39 in the World Economic Forum Global Gender Gap Index, from its 2011 ranking of 31. This marks a steady decline over the past five years, from being placed 12 in 2008. Female participation in government remained low, with only 13 female parliamentarians out of 225. Women's rights in the north and the east of the country remained a concern. Activists focused on issues concerning over 90,000 war widows' rights and economic empowerment. The UK funded two local partners working to tackle rape, domestic violence and forced marriage".<sup>120</sup>

**3.13.4** The Organisation for Economic Co-operation and Development (OECD), Social Institutions and Gender index (SIGI) profile for Sri Lanka states "Family relations in the country are governed by several legal systems. The General Law (civil law) is predominant, but three parallel systems of law may also apply: Islamic, Kandyan, Sinhala and The savalamai law are all grounded in customary practices of particular ethnic groups and/or religions. Women's inheritance rights are different, depending on the legal system. Although there are no reported legal restrictions to women's access to property other than land, women's access is limited by the discriminatory inheritance and land ownership practice. In the conflict areas in the North many women owned houses which were given to them as dowry upon marriage but were unable to claim compensation for destruction or damage in many instances due to loss of documentation. Women also have equal access to bank loans, mortgages and other forms of credit from a variety of sources including the government, private financial institutions and donor-assisted or local credit delivery programmes. The Asian Development Bank reports that low-income women tend to benefit from the

<sup>116</sup> [US State Department, Country Reports on Human Rights Practices 2012: Sri Lanka: 19/04/2013: section 6 Discrimination, Societal Abuses and Trafficking in Persons: Women](#)

<sup>117</sup> [OECD Development Centre: Social Institutions & Gender Index: Sri Lanka: Discriminatory Family Code: website accessed 30 May 2013.](#)

<sup>118</sup> [US State Department, Country Reports on Human Rights Practices 2012: Sri Lanka: 19/04/2013: section 6 Discrimination, Societal Abuses and Trafficking in Persons: Women](#)

<sup>119</sup> [OECD Development Centre: Social Institutions & Gender Index: Sri Lanka: Restricted Civil Liberties: website accessed 30 May 2013.](#)

<sup>120</sup> [UK Foreign & Commonwealth Office \(FCO\) 2012 Human Rights & Democracy report: April 2013: Section IX Human Rights in the Countries of Concern: Sri Lanka.](#)

micro-level group credit schemes”.<sup>121</sup>

### 3.13.5 UNHCR in their 2012 “Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka”<sup>122</sup> state:

- Reports have documented high levels of sexual and gender-based violence against women and girls in the final phase of the armed conflict, as well as in the post-conflict phase, including in parts of the country not directly affected by the conflict. However, this type of violence remains under-reported and, if reported, inadequately investigated according to several sources.
- Rape, assault with the intention to commit rape and “grave sexual abuse not amounting to rape” are prohibited under Sri Lankan penal law. Other sex-based crimes such as trafficking and sexual harassment are also prohibited according to the Penal Code. Marital rape is not a crime in Sri Lanka unless a judge has ordered a spousal separation. Sri Lanka is described as a source country for women and girls (as well as men and boys) subjected to forced labour and sex trafficking abroad. Domestically, women are also reportedly subjected to sex trafficking into brothels. While Sri Lanka prohibits all forms of trafficking through an April 2006 amendment to its penal code, legal protection may not always be effective, including as a result of reported complicity on the part of police and other government officials. Internally displaced persons, war widows, and unregistered female migrants are reported to remain particularly vulnerable to human trafficking.
- A number of factors have been cited in various reports as contributing to increased insecurity and vulnerability of women in the north and east of Sri Lanka. The most relevant include the following: a) large numbers of female-headed households in the areas most affected by the armed conflict; b) women’s weak economic position; c) high militarization, including dependency on security forces for access to detained family members; d) impunity and weak administration of justice; e) prostitution and vulnerability to trafficking in displacement or post-relocation; and f) the vulnerable position of former female LTTE cadres and war widows.”
- Information from different sources on the situation of women, including the CEDAW [Convention to Eliminate All Forms of Discrimination Against Women] concluding observations, indicate that state protection, both in law and in practice, is not necessarily available or accessible to all women throughout the country.

The US State Department HR Practices report also states “Human rights groups in northern districts alleged that widows of men killed in the conflict often became victims of prostitution because of their economic vulnerability”.<sup>123</sup>

### 3.13.6 The Organisation for Economic Cooperation and Development (OECD) social institutions and gender index (SIGI) profile adds that “The war in Sri Lanka has resulted in a rise in the number of female-headed households, particularly in the northern and eastern provinces. This has meant that an increasing number of women have become breadwinners, thus challenging the social institution of the male breadwinner in the family. However, there are a number of legal and administrative barriers facing women as heads of the households --- the legal

<sup>121</sup> [OECD Development Centre: Social Institutions & Gender Index: Sri Lanka: Discriminatory Family Code/ Restricted Resources & Entitlements: website accessed 30 May 2013](#) A.6 Women in certain circumstances.

<sup>122</sup> [UNHCR: Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka: 21 December 2012.](#)

<sup>123</sup> [US State Department, Country Reports on Human Rights Practices 2012: Sri Lanka: 19/04/2013: section 6 Discrimination, Societal Abuses and Trafficking in Persons: Women](#)

superiority of male headed households suggests that negative attitudes towards female headed households persist. Tamil women and girls have historically been the targets of various forms of sexual assault following their arrest or detention at checkpoints. Such assaults were justified on the grounds that they or their family members were suspected members of the Tamil insurgency. Widespread sexual violence and crime has also been a serious issue in internment camps during the conflict. A major challenge to ensuring women's physical integrity in Sri Lanka is the lack of enforcement of laws, gender insensitivity within the police and judiciary and the reluctance of women to report violence. The Asian Development Bank reports that sexual harassment is trivialised and there is a culture of acceptance around violence against women".<sup>124</sup>

**3.13.7** In the report "We will teach you a lesson- sexual violence against Tamils by the Sri Lankan Security Forces" February 2013, Human Rights Watch stated "In March 2011, the report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka noted "many indirect accounts reported by women of sexual violence and rape by members of government forces and their Tamil surrogate forces, during and in the aftermath of the final phases of the armed conflict." The panel added "rapes of suspected LTTE cadre are also reported to have occurred, when they were in the custody of the Sri Lankan police (CID [Criminal Investigation Department] and TID [Terrorist Investigation Department]) or SLA [Sri Lankan Army]." "Humanitarian workers present in northern Sri Lanka during the final months of the conflict described widespread rape of women by the Sri Lankan army. A former UN field officer told Human Rights Watch that "a large number of women fleeing from the conflict areas during the peak of fighting were sexually assaulted".<sup>125</sup> As a general rule, cases of sexual violence and rape by the security forces have been poorly investigated or not pursued at all. Complaints of rape, like other complaints of torture, are often not effectively dealt with by the police, magistrates, or doctors. Weaknesses in the early stages of the criminal investigation process have repeatedly contributed to the ultimate collapse of investigations of alleged rapes and other acts of sexual violence".<sup>126</sup>

**3.13.8** The US State Department Human Rights Practices Report 2012 for Sri Lanka states "There were reports that individual cases of gender-based violence perpetrated by members of the security forces occurred in areas with heavy security force presence, but others stated that military officials were responsive to reports of such incidents and showed a willingness to prosecute the offenders. The government did not release any details about prosecutions or punishments for such offenses, and some observers suggested that there was reluctance by victims to report such incidents in northern and eastern areas where security forces were prevalent. There have been a number of credible reports of sexual violence against women where the alleged perpetrators were armed forces personnel, police officers, army deserters, or members of militant groups. A number of women did not lodge official complaints out of fear of retaliation".<sup>127</sup>

**3.13.9** LandInfo in their report of 7 December 2012 "Sri Lanka: Human rights and security

<sup>124</sup> [OECD Development Centre: Social Institutions & Gender Index: Sri Lanka: Restricted Physical Integrity: website accessed 30 May 2013](#)

<sup>125</sup> [Human Rights Watch: We Will Teach You a Lesson" - Sexual Violence against Tamils by Sri Lankan Security Forces: 26 February 2013: Summary](#)

<sup>126</sup> [Human Rights Watch: We Will Teach You a Lesson" - Sexual Violence against Tamils by Sri Lankan Security Forces: 26 February 2013, I. Background, Decades of Sexual Violence by the Security Forces](#)

<sup>127</sup> [US State Department, Country Reports on Human Rights Practices 2012: Sri Lanka: 19/04/2013: Section 1: Respect for the Integrity of the Person, including Freedom from: c Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment.](#)

issues concerning the Tamil population in Colombo and the Northern Province” state “Female returnees (IDPs) and particularly female rehabilitees are vulnerable, facing social, cultural and livelihood-related difficulties in connection with their resettlement. There are not many documented cases of sexual abuse of local women by security personnel from the Vanni region. Reported cases indicate that violence and sexual abuse of women is as much a family and community problem as a problem connected to the presence of the security personnel in the Northern Province”.<sup>128</sup> “A large proportion of households in the northern province are headed by women, probably over 40,000 in Vanni and more than 20,000 in Jaffna (IRIN News 2010). One of the interlocutors claimed that more than 30 per cent of households in some areas were single-headed. In most cases this means female headed households. There is widespread agreement among interlocutors that these households face more multi faceted and larger social, economic and security problems than traditional households. There is no evidence that the security forces are responsible for many cases of rape/sexual violence against women in female led households in Vanni. The general awareness about the stigma attached to sexual violence and rape in Sri Lanka implies that there could be a considerable underreporting of sexual violence against women. This applies to cases involving community members as well as security forces. In Landinfo's opinion, the general humanitarian and economic conditions, the number of marginalised female headed households and the heavy military presence in the northern province support this assumption”.<sup>129</sup> The US State Department reported “Human rights groups in northern districts alleged that widows of men killed in the conflict often became victims of prostitution because of their economic vulnerability”.<sup>130</sup>

**3.13.10** The British High Commission (BHC) in a letter dated 30 January 2012 noted that “Government assistance for the victims of rape is weak, although there have been some signs of improvement. The country has acknowledged it has a problem and several years ago the Sri Lanka Police Service Children & Women Bureau was created to deal with complaints. An Inspector of Police (IP) for the bureau told us that there are now 42 Children and Women’s Bureau office desks operating across the island and following the end of the civil conflict new office desks had been opened up in the North and East. The headquarters of the Children and Women’s Bureau is situated in Pagoda, Colombo. Female sub inspector officers have been assigned to each of the 42 desks and they have received training in how to record a complaint sympathetically and how to refer a victim to a suitably equipped hospital. There does not appear to be long-term assistance given to rape victims although there are several NGOs that provide pastoral care but mainly to victims of domestic abuse. The IP stated that most rape and sexual assault cases are reported by females aged 16 and under”.<sup>131</sup>

**3.13.11** The Bureau for the Prevention of Abuse of Women & Children (BPWC), established by the police, conducted awareness programs in schools and at the grassroots level, prompting women to file complaints. The police also established women’s bureaus in police stations throughout the year. The BPWC held awareness programs for males in state and private organisations and awareness programs targeted at passenger transport personnel. The police recorded 900

<sup>128</sup> [LandInfo: Sri Lanka Human rights and security issues concerning the Tamil population in Colombo and the Northern Province, Summary, 7 December 2012](#)

<sup>129</sup> [LandInfo: Sri Lanka Human rights and security issues concerning the Tamil population in Colombo and the Northern Province, section 7 Women in Vanni and 7.1 Security- presence of SLA: sexual violence, 7 December 2012.](#)

<sup>130</sup> [US State Department, Country Reports on Human Rights Practices 2012: Sri Lanka: 19/04/2013: Section 6, Discrimination, Societal Abuses and Trafficking in Persons; Women.](#)

<sup>131</sup> Home Office [Country of Origin Information Service: Country of Origin Information \(COI\) Report- Sri Lanka, 20 Women: Assistance available to women; 20.61, 7 March 2012](#)

incidents of rape during the first six months of the year, but reported incidences were unreliable indicators of the degree of this problem because many victims were unwilling to file reports. Services to assist victims of rape and domestic violence, such as crisis centres, legal aid, and counselling, were generally scarce due to a lack of funding.<sup>132</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.13.12 Conclusion:** Caseworkers must refer to the asylum instruction on gender identity in the asylum claim the Sri Lankan authorities have demonstrated a willingness to promote gender equality and laws exist to protect women experiencing, or fearing, gender based violence, except for marital rape.

**3.13.13** In general state protection is statutorily available to women, however, impunity within the police and security forces remains a serious problem, and societal and family pressures are likely to prevent the majority of women, in particular older ones, from seeking protection. Additionally, some women's ability to access assistance may be further limited by such factors as their location, religious faith, lack of literacy and lack of awareness of their rights in what remains a patriarchal (characteristic of a culture in which men are the most powerful members) society. For these reasons effective state protection is unlikely to be available to the majority of women fearing sexual and gender based violence. Each case should be considered on its individual merits to assess whether effective protection will be provided to an individual.

**3.13.14** For some women in Sri Lanka relocation will not be unduly harsh but given the numbers of IDPs in the post conflict environment, this is only likely to be the case where the individual can access adequate support from family, or from community members, based in Sri Lanka or abroad, or is able to support herself and / or any dependents. UNHCR's eligibility guidelines consider that Sri Lanka's northern region in particular is not likely to qualify as a reasonable relocation alternative for women.<sup>133</sup>

**3.13.15** Where a Sri Lankan woman is able to show that she faces a real risk of gender based violence amounting to torture or inhuman or degrading treatment is unable, or unwilling through fear, to access protection and where internal relocation is unduly harsh, a grant of refugee status would be appropriate as a member of a particular social group.

### **3.14 Gay men, lesbians, bi-sexual and transgender (LGBT)**

**3.14.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Sri Lankan authorities on the grounds of their LGBT sexuality.

**3.14.2 Treatment:** The FCO reports in its 2012 HR & Democracy report that "Homosexuality remains illegal under Sri Lankan law. The British High Commission

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<sup>132</sup> [US State Department, Country Reports on Human Rights Practices 2012: Sri Lanka: 19/04/2013: section 6 Discrimination, Societal Abuses and Trafficking in Persons: Women](#)

<sup>133</sup> [UNHCR: Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka; 21 December 2012, B. Internal Flight or Relocation Alternative](#)



supported lesbian, gay, bisexual and transgender rights activists in raising concerns over harassment”.<sup>134</sup> The US State Department’s Human Rights Practices 2012 report for Sri Lanka states “Same-sex sexual activity is punishable by a prison sentence up to 10 years and there were no legal safeguards to prevent discrimination based on sexual orientation or gender identity. In practice the criminal provisions were very rarely enforced. In recent years human rights organisations reported that, while not actively arresting and prosecuting members of the LGBT community, police harassed and extorted money or sexual favours from LGBT individuals with impunity and assaulted gays and lesbians in Colombo and other areas. Crimes and harassment against LGBT individuals were a problem, although such incidents often went unreported. Social stigma against LGBT persons remained a problem. There were reports that persons undergoing gender-reassignment procedures had difficulty amending government documents to reflect those changes.”<sup>135</sup>

**3.14.3** Gay Times reports “There is a sizeable gay population in Sri Lanka but many gays and lesbians cannot come to terms with themselves due to family pressures and behavioural expectations imposed by Sri Lankan culture. A gay identity does not make much sense to many homosexuals. There is no gay scene in the western sense in Sri Lanka but there are several gay groups who lobby for reform and provide support and counselling to gays and lesbians. Many of these groups also organise occasional gay events such as parties and outings. Homosexual acts between men, regardless of age, are prohibited under Section 365a of the Penal Code with a penalty of up to 10 years imprisonment. The law is not enforced and there have been no prosecutions for 50 years but in a largely Buddhist country homosexuality is seen as a sin. Local gay groups complain that the mere existence of the law is enough for the police and anti-gay groups to brand gays and lesbians as “perverts” and lawbreakers. They argue it is discriminatory and stigmatises gays and lesbians leading to abuse of gay people in their community”.<sup>136</sup>

**3.14.4** As regards the legal position for lesbians the International Lesbian, Gay, Bisexual, Trans and Intersex Association’s (ILGA) latest report on ‘State-sponsored Homophobia’ includes excerpts from Sri Lanka’s amended 1995 Penal Code, which states that “carnal intercourse against the order of nature with any man, woman or animal” is a crime, thus making homosexual sexual activity illegal.<sup>137</sup>

**3.14.5** UNHCR in their 2012 “Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka” state “While few cases have ever been prosecuted, blackmail, violent threats, employment discrimination, rejection by friends, family, the police and society at large are regularly reported. Negative societal attitudes are reported to affect Sinhala, Muslim and Tamil members of the LGBTI community. Cases of physical assault, harassment, detention and police violence are reportedly not uncommon. In autumn 2011, a Sinhala newspaper published a series of articles accusing a gay rights group involved in HIV/AIDS prevention activities, “Companions on a Journey” (CoJ), of promoting homosexuality. The articles also reportedly published pictures and personal details of gay rights activists, including of a man working in a counselling centre in Colombo operated by the organisation. In a subsequent interview with

<sup>134</sup> [UK Foreign & Commonwealth Office \(FCO\) 2012 Human Rights & Democracy report: April 2013: Section IX Human Rights in Countries of Concern: Sri Lanka.](#)

<sup>135</sup> [US State Department, Country Reports on Human Rights Practices 2012: Sri Lanka: 19/04/2013: section 6 Discrimination, Societal Abuses and Trafficking in Persons: Societal Abuses, Discrimination and Acts of Violence based on Sexual Orientation and Gender Identity](#)

<sup>136</sup> [Gay Times: Gay Guide: Sri Lanka profile: accessed 28 May 2013.](#)

<sup>137</sup> [ILGA, State-sponsored Homophobia, May 2013, Asia, Sri Lanka](#)

another newspaper, the man indicated that, as a result of this exposure, his landlord made him leave his boarding house and he has been ostracized by his extended family. After the publication of the articles, it was reported that the office premises of CoJ had been searched by the police. Persons present in the office were reportedly questioned for several hours and intimidated. It was furthermore reported that, as a result of threats and harassment, the organisation is no longer functioning. There are two other organisations reported to be working on LGBT rights: Equal Ground and the Women's Support Group. In addition, there are reportedly two smaller groups which were established in the last few years: the Diversity and Solidarity Trust (DAST) and Sakhi Collective. These groups are described as an LGBT rights movement "in a nascent stage".<sup>138</sup>

**3.14.6** In the same guidelines UNHCR report "A 2011 publication based on interviews with 17 "queer" women in Sri Lanka described that all participants reported "facing homophobic violence of differing intensities: verbal, psychological and/or physical. Some of the abusive behaviours experienced were verbal abuse in public spheres, harassment by police and armed forces personnel, and physical violence faced in public places". "Persons undergoing gender reassignment procedures have reportedly had difficulty in amending government documents to reflect those changes." "No specific information on the situation of intersex persons in Sri Lanka has been found; the absence of precise and specific information or reported incidents relating to the treatment of these persons should not be understood as indicating an absence of risk of serious harm".<sup>139</sup>

**3.14.7** The Daily Financial Times (FT) newspaper in Sri Lanka reported 18 May that "The International Day Against Homophobia and Transphobia, popularly known as IDAHO, falls on 17 May. The British High Commission Colombo marked IDAHO with a presentation of a cheque by the British Deputy High Commissioner Robbie Bulloch to Rosanna Flamer-Caldera, Director of Equal Ground, a non-profit organisation seeking human and political rights for the Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning (LGBTIQ) community of Sri Lanka".<sup>140</sup> Equal Ground in an article on its web site of 27 June 2012 highlighted events for Colombo Pride, 2012 stated "For too long the Lesbian, Gay, Bisexual and Transgender (LGBT) persons of this country have been marginalised and discriminated against due to their sexual orientation and gender identity. Hard work by LGBT activists is slowly and steadily paving the way towards a positive life for a minority group of people that have been deprived of so much and unjustly far too long".<sup>141</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.14.8 Conclusion:** Caseworkers must refer to the Asylum Instruction on sexual orientation and gender identity in the asylum claim. Homosexuality is illegal in Sri Lanka but there is no evidence of systematic state persecution. Opportunistic targeting, societal hostility and discrimination against LGBT persons does exist and in individual cases may reach the Article 3 threshold.

<sup>138</sup> [UNHCR: Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012.A8 Lesbian, Gay, Bisexual, Transgender and Intersex \(LGBTI\) Individuals in certain circumstances.](#)

<sup>139</sup> [UNHCR: Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012.A8 Lesbian, Gay, Bisexual, Transgender and Intersex \(LGBTI\) Individuals in certain circumstances.](#)

<sup>140</sup> [Daily FT: British High Commission marks Day Against Homophobia, Transphobia: 18 May 2013.](#)

<sup>141</sup> [Equal Ground web site: Colombo 27 June 2012.](#)

- 3.14.9** Given the level of social hostility, internal relocation in such cases is unlikely to be a viable alternative, however the personal circumstances of the individual applicant should be carefully considered when assessing whether it would be unduly harsh to expect them to do so.
- 3.14.10** UNHCR in its Dec 2012 Eligibility Guidelines concludes that “LGBTI individuals may, depending on the individual circumstances of the case, be in need of international refugee protection often, but not exclusively, on account of belonging to a particular social group”<sup>142</sup>. Where caseworkers therefore conclude that a claimant is at real risk of persecution in Sri Lanka on account of their sexual orientation then a grant of asylum would be appropriate.
- 3.14.11** If an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation.
- 3.14.12** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly LGBT then he/she will have a well-founded fear and should be granted asylum. It is important that LGBT people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well-founded fear of persecution due to their sexual orientation.

### **3.15 Minority Religions**

- 3.15.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Sri Lankan authorities due to being a member of a minority religion.
- 3.15.2 Treatment:** The US State Department in its 2012 report on International Religious Freedom: Sri Lanka notes “The constitution and other laws and policies protect religious freedom and, in practice, the government generally respected religious freedom. The constitution accords Buddhism the “foremost place” and commits the government to protecting it, but does not recognise it as the state religion. Approximately 70 per cent [of the population] is Buddhist, 15 per cent Hindu, eight per cent Christian, and seven percent Muslim. Christians tend to be concentrated in the west, Muslims populate the east, and the north is predominantly Hindu. Most members of the majority Sinhalese community are Theravada Buddhists. Most Tamils, the largest ethnic minority, are Hindus; most Muslims are Sunnis and almost 80 per cent of Christians are Roman Catholics, [with other Christian churches also present]”. Religion is a mandatory subject in the public school curriculum. Parents may choose for their children to study Buddhism, Islam, Hinduism, or Christianity. Students belonging to other religious groups can pursue religious instruction outside the public school system. The government observes the following religious holidays as national holidays: Buddhist Poya days; Hindu Thai Pongal, New Year, and Deepawali festivals; Islamic Hadji and Ramadan festivals and the birth of Prophet Muhammad; and Christian Good Friday, and Christmas”.<sup>143</sup>

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<sup>142</sup> [UNHCR: Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka: 21 December 2012, A8 Lesbian, Gay, Bisexual, Transgender and Intersex \(LGBTI\) Individuals in certain circumstances.](#)

<sup>143</sup> [US State Department, International Religious Freedom for 2012: Sri Lanka: 20 May 2013:: Executive Summary Section II: Legal /Policy Framework & Section I: Demography](#)

- 3.15.3** The Sri Lankan Government's Department of Census and Statistics in its "Census of Population and Housing: 2012" provides breakdowns by districts for ethnicity and religion.<sup>144</sup> The US Library of Congress in a report "Sri Lanka: a Country Study 1988 Ethnic Groups" notes: "The Muslim community is divided into three main sections--the Sri Lankan Moors, the Indian Moors, and the Malays, each with its own history and traditions. The Sri Lankan Moors make up 93 per cent of the Muslim population and seven percent of the total population of the country (1,046,926 people in 1981). The language of the Sri Lankan Moors is Tamil, or a type of "Arabic Tamil" that contains a large number of Arabic words."<sup>145</sup>
- 3.15.4** The USSD 2012 religious freedom report states "The Ministry of Buddha Sasana and Religious Affairs has four departments working specifically with Buddhist, Hindu, Muslim, and Christian groups<sup>146</sup>. According to the legislation defining their mandates, each department should formulate and implement programs that inculcate [encourage] religious values and promote a "virtuous society." During the year [2011] the Department of Christian Religious Affairs developed infrastructure facilities at places of worship and provided financial assistance to churches in need. It also conducted evaluation of teachers of Christianity. The Department of Muslim Religious Affairs organised Muslim religious events, contributed towards development needs of Islamic institutions, and issued identity cards for Islamic clergy. It also issued letters of recommendation for students seeking education in Islamic studies in foreign countries".<sup>147</sup>
- 3.15.5** The trend in the government's respect for religious freedom did not change significantly during the year. In certain instances, local authorities failed to respond effectively to communal attacks, including attacks on members of minority religious groups. There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Sporadic attacks on Christian churches by Buddhist extremists and some societal tension due to ongoing allegations of forced or "unethical" conversions (for instance, the use of bribes to persuade people to convert) continued, although the number and scale of attacks were reportedly fewer than in recent years. Intolerance of and discrimination against, Muslims by some Buddhists increased during the year [2012].<sup>148</sup> There were reports of abuses of religious freedom. Although the government publicly endorsed religious freedom, in practice there were problems in some areas. Authorities were reluctant to investigate or prosecute those responsible for attacks on churches, Hindu temples, or mosques. While efforts to pass anti-conversion legislation reportedly declined, some Christian groups occasionally complained that the government tacitly condoned harassment and violence aimed at them. Police generally provided protection for these groups at their request. In some cases, the police response was inadequate and local police officials reportedly were reluctant to take legal action against individuals involved in the attacks. Some evangelical Christian groups reported incidences of governmental discrimination in the provision of services. There also were reports of government schools refusing to enrol Christians on the basis of their religion.<sup>149</sup>

<sup>144</sup> [Dept Census & Statistics: Sri Lanka: Census of Population & Housing: 2012](#)

<sup>145</sup> [US Library of Congress: Sri Lanka: A Country Report: Ethnic Groups: accessed 21 May 2013](#)

<sup>146</sup> [US State Department: International Religious Freedom Report for 2012, Sri Lanka: 20 May 2013: Legal/Policy Framework.](#)

<sup>147</sup> [US State Department, 2011 Report on International Religious Freedom: Sri Lanka, 30 July 2012: Section II: Legal /Policy Framework](#)

<sup>148</sup> [US State Department: International Religious Freedom Report for 2012, Sri Lanka: 20 May 2013: Executive Summary](#)

<sup>149</sup> [US State Department: International Religious Freedom Report for 2012, Sri Lanka: 20 May 2013: Government Practices.](#)

**3.15.6** The US 2011 religious report notes as regards LTTE abuses that “The LTTE victimized Muslims, Hindus, Buddhists, and Christians. In 1990 the LTTE expelled tens of thousands of Muslim inhabitants, virtually the entire Muslim population in the area, from the northern part of the country, many from the town of Jaffna.<sup>150</sup> An article by Groundnews – Journalism for citizens, of 21 June 2011 reported that “For about 21 years, more than 100,000 Internally Displaced People from the Northern Province of Sri Lanka have been languishing in camps. Mainly from the Muslim community, these people were forced out by the LTTE for crimes of not being Tamil. For centuries, the Muslim community has been scattered around Sri Lanka living in co-existence with the other two main ethnic communities (Sinhalese and Tamil) with very close socio-economic interactions among them. In every way Muslims and Tamils in the North had been traditionally totally integrated into local life as interdependent communities. All this was to change on the 23 October 1990, when at about 8am in the morning, a voice blasting through the loudspeaker mounted on a moving vehicle declared that: “Muslims are given 24hrs to exit from the ‘Tamil land’ and they should leave all their possessions behind”. Armed LTTE cadres had gone round every village and handed over letters from their district leaders forcing the chief trustees of all mosques to read out the letters over loud speakers. The order of expulsion had shocked the country with the forcible eviction creating a new dimension in the ethnic crisis distancing the three communities in their co-existence and wellbeing. What the Muslims from the north had experienced is a deliberate act of ethnic cleansing carried out by the LTTE”.<sup>151</sup>

**3.15.7** There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Although discrimination based on religious differences was much less common than discrimination based on ethnicity, societal discrimination based upon religious belief increased during the year [2012]. In general, members of the different religious groups tended to be tolerant of each other’s religious beliefs although there was at times an atmosphere of distrust. Incidents such as the destruction of places of worship by Buddhist monks exacerbated such tensions. A survey by the Asia Foundation, an international NGO working in the country, found that religious tension continued to be a problem among Muslim, Tamil, Christian, and Buddhist groups. Christians, particularly those from evangelical denominations, sometimes encountered harassment and physical attacks on property and places of worship by local Buddhists who were opposed to conversion and believed Christian groups threatened them. The number and severity of the attacks reportedly diminished somewhat during the year [2012].<sup>152</sup> The BBC reported on 25 March 2013 “At recent rallies, the most prominent new hard-line group, the Buddhist Strength Force (Bodu Bala Sena, BBS) have used coarse, derogatory language to describe Muslim imams and have told the Sinhalese majority not to rent property to Muslims. At one meeting attracting thousands, the organisation's secretary, Gnanasara Thero, told each Buddhist present to become "an unofficial policeman against Muslim extremism" and said "so called democrats" were destroying the Sinhala race. At the temple in the suburb of Dehiwala the presiding monk, Akmeemana Dayarathana, has founded another ultra-nationalist Buddhist group, Sinhala Echo. He says the Sinhalese have real grievances that Muslims are trying to convert people, building too many mosques - even having too many children. A few days later his organisation stormed a house where they alleged Christian conversions were taking place and verbally abused the family

<sup>150</sup> [US State Department, 2011 Report on International Religious Freedom: Sri Lanka, 30 July 2012: Section II: Abuses by rebel or foreign forces or terrorist organisations](#)

<sup>151</sup> [Ground news: Journalism for Citizens; 21 years of hopeless existence: 21 June 2011.](#)

<sup>152</sup> [US State Department, International Religious Freedom Report for 2012: Sri Lanka, 21 May 2013: Section III: Status of societal respect for religious freedom.](#)

inside, some of them - according to a local website - physically assaulting a woman. Since last April, when monks led an attack on a mosque during Friday prayers in the town of Dambulla, there have been regular accounts of mosques being attacked or vandalised, for instance with graffiti or pictures of pigs. There have also been assaults on churches and Christian pastors but it is the Muslims who are the most concerned.<sup>153</sup>

**3.15.8** The same BBC news article reported “It has become clear that the BBS has top-level support. At its ceremony to open a new training school, the guest of honour was the powerful Defence Secretary Gotabhaya Rajapaksa, brother of the president. “It is the monks who protect our country, religion and race,” he said in a speech. Clearly not everyone in the government - which in any case contains Muslim ministers - is happy with the rise of the hardliners. Some Sinhalese ministers have expressed unease and a prominent newly retired diplomat, Dayan Jayatilleka, calls the BBS an “ethno-religious fascist movement from the dark underside of Sinhala society”.<sup>154</sup> Huff Post World in an article 22 May 2013 stated “In Sri Lanka, an imperative to “protect” Buddhism has been used to discriminate against non-Buddhist peoples for decades. Disturbingly, there have been mobs either composed of or led by robed monks that have attacked churches and have made pronouncements of the imperative to “protect Buddhism” a rallying cry for violence against Tamils of different faiths and of other peoples who are not practitioners of Sri Lankan Theravada Buddhism. Though the civil war there was conclusively won by government forces in 2009, there remains an alarming tendency to dismiss non-Buddhist peoples in the country as being less than in ways that infringe on the very fundamentals of political and human rights. Colombo has refused to allow independent human rights monitors or the UN to have access to the areas and peoples most at risk and their popular internal support for such actions are often couched in the language of “defence of Buddhism”.<sup>155</sup>

**3.15.9** The FCO in its 2012 HR & Democracy report states “Commentators observed an increase in religiously motivated violence in 2012. During the year, 52 incidents of violence and intimidation against Protestant Christian churches were documented. Violence against Muslim places of worship also increased. A mob led by Buddhist monks attacked a mosque in the city of Dambulla, which they claimed (along with a Hindu shrine) was built on sacred Buddhist ground and needed to be relocated. No arrests were made and tensions between religious communities continued. A nationalist group called the Bodu Bala Sena (Buddhist army) increased campaigns against religious minorities”.<sup>156</sup>

**3.15.10** The British High Commission in a letter dated 27 September 2011 observed that: “The third largest [ethnic] group are Muslims who make up around 7% of the population. Sri Lanka is unique in that Muslims are considered an ethnic group as well as a religious group, although you often see people referred to as Ceylonese Moors or Sri Lankan Moors on government issued documents, such as birth certificates.”<sup>157</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)

<sup>153</sup> [BBC News: The hard-line Buddhists targeting Sri Lankan Muslims, 25 March 2013](#)

<sup>154</sup> [BBC News: The hard-line Buddhists targeting Sri Lankan Muslims, 25 March 2013](#)

<sup>155</sup> [Huff PostWorld 22 May 2013: Religion & Human Rights: Buddhist Hatred in Sri Lanka and Burma.](#)

<sup>156</sup> [UK Foreign & Commonwealth Office \(FCO\) 2012 Human Rights & Democracy report: April 2013: Countries of Concern: Sri Lanka.](#)

<sup>157</sup> [Country of Origin Information Service: Country Report for Sri Lanka, 7 March 2012, Muslims, para 18.16.](#)

**Caselaw (section 2.5 above)**

**3.15.11 Conclusion:** There is no evidence that religious minorities are at risk of persecution at the hands of the Sri Lankan authorities solely because of their religious belief, nor that in general the authorities would be unwilling to offer protection. Hindus, Christians and Moslems constitute 30 per cent of the Sri Lankan population [see 3.15.2]. Caseworkers should note 3.15.10 above; the fact a Muslim might speak Tamil does not indicate that the individual is of Tamil ethnicity.

**3.15.12** Although there are incidents of Christians and Moslems being targeted in Sri Lanka, the sheer numbers [15 per cent of the population] as a whole in the country does not indicate that those concerned are generally subject to treatment which would be persecutory or otherwise inhuman or degrading treatment. Where in individual cases the claimant does face a serious risk of persecution, torture or inhuman or degrading treatment, caseworkers will need to consider whether there is effective protection for the particular individual and whether they could relocate internally to a place where they would not face a real risk of serious harm and where they can reasonably be expected to stay. Where internal relocation would avoid persecution and would be reasonable, a grant of asylum will not be appropriate.

**3.16 Prison conditions**

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

**3.16.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of humanitarian protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

**3.16.3 Consideration:** In its “Country Report on Human Rights Practices 2012: Sri Lanka” the US State Department reports “Prison conditions were poor and did not meet international standards due to overcrowding and the lack of sanitary facilities. In many cases prisoners reportedly slept on concrete floors and often lacked natural light or sufficient ventilation. According to prison officials and civil society sources, prisons designed for approximately 11,000 inmates held an estimated 32,000 prisoners. More than 13,000 of these prisoners either were awaiting or undergoing trial.<sup>158</sup> The judicial process moved slowly, and more than half of those in prison either were awaiting or undergoing trial. More than 1,000 prisoners awaiting trial had spent in excess of two years in remand. Trial delays often were caused by lengthy legal procedures, large numbers of detainees, judicial inefficiency, and corruption. Legal advocacy groups asserted that it was common for the length of detention to equal or exceed the sentence for the alleged crime”.<sup>159</sup>

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<sup>158</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section 1: Respect for the Integrity of the Person, Including Freedom from: c Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Prison and Detention Centre Conditions.](#)

<sup>159</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section 1: Respect for the Integrity of the Person, Including Freedom from: d Arbitrary Arrest or Detention: Arrest Procedures and Treatment While in Detention.](#)

- 3.16.4** Between May 17 and May 24 [2012], 200 inmates from prisons in Colombo, Kalutara, and Vavuniya undertook a hunger strike demanding that authorities either initiate legal action against them or release them from jail. The prisoners called off the hunger strike after authorities promised to establish three new high courts to accelerate the cases of suspected LTTE prisoners. The Justice Ministry completed initial work to establish the high courts, but their work to process cases was delayed due to the insufficient number of high court judges. As of October 2012, the Justice Ministry had taken steps to amend the Judicature Act to increase the number of high court judges to 95 from the present 75.<sup>160</sup>
- 3.16.5** There were approximately 1,400 female prisoners. In some cases juveniles were not held separately from adults. Pre-trial detainees often were not held separately from those convicted. Petty criminals and sexual offenders often were incarcerated with perpetrators of more serious crimes. Female prisoners were held separately from male prisoners and in generally poor conditions. Prisoners and detainees had access to potable water. Authorities acknowledged poor prison conditions but noted a lack of space and resources as determining factors. Aside from those held in informal detention facilities, prisoners and detainees were allowed access to family members. Prisoners and detainees were permitted religious observance. There were no ombudsmen to handle prisoner complaints.<sup>161</sup>
- 3.16.6** There were alternatives to incarceration for nonviolent offenders, including community service and community-based corrections alternatives. Community-based corrections included elements of rehabilitation and counselling in addition to community service work”.<sup>162</sup> “The president granted amnesty to a number of prisoners throughout the year [2012] on national holidays or other occasions. For example, on February 4, the president granted amnesty to 1,400 inmates convicted of minor offenses to mark the 64th anniversary of independence”.<sup>163</sup>
- 3.16.7** The monitoring of prisons the US report notes “International organisations were not allowed access to regular and remand prisons for a significant portion of the year. The government permitted independent human rights observers and the ICRC [International Committee of Red Cross] to visit Terrorist Investigation Division detention facilities. The government stated that detention facilities operated by military intelligence did not exist.”<sup>164</sup> During the year the government detained and imprisoned a number of persons for political reasons. The government permitted access to such persons on a regular basis by international humanitarian organisations”.<sup>165</sup>

<sup>160</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section1: Respect for the Integrity of the Person, Including Freedom from: d Arbitrary Arrest or Detention: Arrest Procedures and Treatment While in Detention.](#)

<sup>161</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section1: Respect for the Integrity of the Person, Including Freedom from: c Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Prison and Detention Centre Conditions](#)

<sup>162</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section1: Respect for the Integrity of the Person, Including Freedom from: c Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Prison and Detention Centre Conditions.](#)

<sup>163</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section1: Respect for the Integrity of the Person, Including Freedom from: d Arbitrary Arrest or Detention: Arrest Procedures and Treatment While in Detention.](#)

<sup>164</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section1: Respect for the Integrity of the Person, Including Freedom from: c Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Prison and Detention Centre Conditions.](#)

<sup>165</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section1: Respect for the Integrity of the Person, Including Freedom from: e Denial of Fair Public Trial: Political Prisoners and Detainees.](#)



- 3.16.8** The FCO in its 2012 Human Rights & Democracy report states “A riot at Colombo’s Welikada Prison on 9 November 2012 resulted in the death of 27 inmates. Some media and opposition members alleged that 11 of the dead inmates were individually executed several hours after the situation had been brought under control. Domestic investigations are under way”.<sup>166</sup> The US State Department commenting on the riot in its “Country Report on Human Rights Practices 2012: Sri Lanka” adds that “Separate investigations by Minister of Rehabilitation and Prison Reforms Chandrasiri Gajadeera and by Prisons Commissioner General P.W.Kodippili found that overcrowding of prisons, easy access to narcotics, and resistance by prisoners to the Special Task Force (STF) search operations were the main reasons for the riot”.<sup>167</sup> Both the US and FCO reports comment on an incident at Vavuniya Prison in June 2012, with the FCO report stating that “A joint military and police operation to rescue three prison officials taken hostage by protesting prisoners in June resulted in serious injuries to three prisoners, two of whom subsequently died. Civil society and Tamil political parties alleged excessive use of force”.<sup>168</sup>
- 3.16.9** Death Penalty: The FCO in its 2012 Human Rights & Democracy report notes “Sri Lanka has maintained a de facto moratorium on the death penalty since 1976, but on 18 December abstained in a UN General Assembly vote calling for its abolition, having previously voted in favour. The UK and EU expressed concern to the Sri Lankan Ministry of External Affairs”.<sup>169</sup>
- 3.16.10 Conclusion:** Conditions in prisons and detention centres remain poor. Taking into account the levels of overcrowding, unsanitary conditions, lack of food and the incidence of ill treatment, including torture, are likely to reach the Article 3 threshold and a grant of humanitarian protection may be appropriate - see exclusion below.
- 3.16.11** The Tribunal in GJ & Others (post –civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) [section 2.4 – Caselaw], 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, see paragraph 356 (4). For both men and women perceived to be connected to the LTTE or as advocates of Tamil separatism, there may be a heightened risk in prison of ill-treatment and caseworkers will need to consider whether a grant of asylum based upon imputed political opinion is appropriate – see exclusion below.
- 3.16.12** Caseworkers need to consider the individual facts of the case and take into account that a custodial sentence is not mandatory in all instances (see 3.16.6 above). Where case owners believe that an individual is likely to face imprisonment on return to Sri Lanka they should also consider whether the applicant’s actions merit exclusion by virtue of Article 1F of the Refugee Convention. Where case owners consider that this may be the case they should contact a senior caseworker for further guidance.

#### **4. Minors claiming in their own right**

<sup>166</sup> [Foreign & Commonwealth Office: Human Rights & Democracy 2012: Countries of Concern: Sri Lanka: Access to Justice and the Rule of Law](#)

<sup>167</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: Section1: Respect for the Integrity of the Person, Including Freedom from: a. Arbitrary or Unlawful Deprivation of Life.](#)

<sup>168</sup> [US State Department: Country Reports on Human Rights Practices for 2012: Sri Lanka: 19 April 2013: section1: Respect for the Integrity of the Person, Including Freedom from: a. Arbitrary or Unlawful Deprivation of Life.](#)

<sup>169</sup> [Foreign & Commonwealth Office: Human Rights & Democracy 2012: Countries of Concern: Sri Lanka: Access to Justice and the Rule of Law.](#)

- 4.1** Minors claiming in their own right who have not been granted asylum or humanitarian protection can only be returned where the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be returned.
- 4.2** At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in Sri Lanka. Those who cannot be returned should be considered for leave as unaccompanied asylum seeking children (UASC).
- 4.3** Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to try to trace the families of UASC as soon as possible after the claim for asylum is made, while making sure that those endeavours do not jeopardise the child's and/or their family's safety. Information on the infrastructure within Sri Lanka which may potentially be utilised to assist in trying to trace the families of UASC, can be obtained from the Country of Origin Information Service (COIS).
- 4.4** Caseworkers should refer to the asylum instruction: [Processing an Asylum Application from a Child](#), for further information on assessing the availability of safe and adequate reception arrangements, UASC leave and family tracing. Additional information on family tracing can be obtained from the [interim guidance](#) on Court of Appeal judgment in [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#).

## **5. Medical treatment**

- 5.1** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COIS.
- 5.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
- 5.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
- 5.4** The improvement or stabilisation in an applicant's medical condition resulting from

treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return; namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

**5.5** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a senior caseworker for consideration before granting discretionary leave. Caseworkers must refer to the asylum instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

## **6. Returns**

**6.1** There is no policy which precludes the enforced return to Sri Lanka of failed asylum seekers who have no legal basis of stay in the UK.

**6.2** UNHCR's eligibility guidelines note that "sources have reported recent cases of former Sri Lankan (in particular Tamil) asylum seekers who were allegedly detained and ill-treated or tortured after having been forcibly returned to Sri Lanka upon rejection of their asylum claims or who voluntarily returned to Sri Lanka."<sup>170</sup> However the Tribunal concluded in the country guidance case of GJ & Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) [see section 2.4 – Caselaw] –that:

- There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. 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, see paragraph 356 (6).
- 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, see paragraph 356- 7(d).
- The authorities maintain a computerised intelligence-led "watch" list. A person whose name appears on a "watch" list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces see paragraph 356- 7(9).

**6.3** The Tribunal also concluded in GJ & Others that "our judgment is that the weight of the evidence before us does not support a finding that returnees will be in difficulty during travel to their home areas to refresh their Sri Lankan documents, in particular their identity cards. 100,000 Tamils were without identity cards at the end of the civil war. Returnees will have given their onward address at the airport, will have

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<sup>170</sup> [UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka 21 December 2012 II Main developments in Sri Lanka, A.2 Return of Refugees and Failed Asylum-seekers](#)

contact details for the BHC in Colombo, and are, to some extent, monitored by the International Organization for Migration (IOM) in their home areas. They will be travelling on a TTD [temporary travel document] if they have no other document. There are fewer checkpoints and those operating them will know the CID or police check all returnees shortly after they reach the home area, and that those on a “stop” list would not pass the airport” (paragraph 266).

- 6.4** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 6.5** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in line with [chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 6.6** Sri Lankan nationals may return voluntarily to any region of Sri Lanka at any time in one of three ways. Leaving the UK:
- by themselves, where the applicant makes their own arrangements to leave the UK
  - through the voluntary departure procedure, arranged through the UK Immigration service, or
  - under one of the assisted voluntary return (AVR) schemes.
- 6.7** The AVR scheme is implemented on behalf of the Home Office by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Sri Lanka. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Sri Lankan nationals wishing to avail themselves of this opportunity for assisted return to Sri Lanka should be put in contact with Refugee Action. Details can be found on Refugee Action’s web site at: [www.choices-avr.org.uk](http://www.choices-avr.org.uk).

**Country Specific Litigation Team  
Operational Policy and Rules Unit  
Operational Systems Transformation  
Home Office**

**July 2013**