



# OPERATIONAL GUIDANCE NOTE

## SRI LANKA

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## **1 Introduction**

- 1.1** This document evaluates the general, political and human rights situation in Sri Lanka and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Sri Lanka Country of Origin Information at: [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners 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.

### **Source documents**

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

## **2 Country assessment**

- 2.1** Following independence from Britain in February 1948, the political scene in Sri Lanka has been dominated by two parties: the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP). In 1972, Sri Lanka adopted a republican constitution based on an

executive presidency which introduced for the first time elections based on proportional representation.<sup>1</sup>

- 2.2** Presidential elections on 17 November 2005 resulted in the election of President Mahinda Rajapakse of the United Peoples Freedom Alliance (UPFA) to a six year term (the UPFA is an alliance between the SFLP and the People's Liberation Front - the JVP). The prime minister of Sri Lanka is appointed by the president and on 21 November 2005 Ratnasiri Wickremanayake was sworn-in as prime minister.<sup>2</sup>
- 2.3** The 26 year ethnic conflict in Sri Lanka between the Liberation Tigers of Tamil Eelam (LTTE) who want an independent Tamil homeland, and the Sri Lankan government, concluded on 18 May 2009 when the Sri Lankan authorities declared victory over the LTTE. Fighting had intensified between both sides from 2007 when the government made significant gains against the LTTE on the ground in the eastern regions taking control of Batticaloa and Thoppigala on 11 July 2007, signifying the end of LTTE influence in the area. In January 2008, a ceasefire agreement (CFA) between the LTTE and the government was formally annulled by the government. Military operations in the northern districts under the control of the LTTE stepped up a pace at the end of 2008 when the government gained control of Kilinochchi (the LTTE's administrative headquarter since 1998), the Jaffna A9 highway and Mullativu town. The final military act was played out in just 300 square metres of territory along the western boundary of the Mullativu lagoon.<sup>3</sup> Most, if not all, of the LTTE's leadership, including its commander in chief, Vellupillai Prabhakaran, were killed.<sup>4</sup>
- 2.4** In August 2005, the Sri Lankan Parliament approved emergency regulations giving power of arrest to members of the armed forces who were required to turn over suspects to the police within 24 hours. The regulations provided for individuals to be detained for up to one year without trial.<sup>5</sup> In response to an attempt to assassinate the defence secretary in December 2006, the government reinstated certain provisions of the pre-CFA Prevention of Terrorism Act (PTA) as an additional emergency regulation giving the security forces broader arrest and detention prerogatives than previously allowed.<sup>6</sup> Since then, the state of emergency has been extended regularly on a monthly basis and on 9 June 2009, the pro-LTTE website Tamil Net reported that the Sri Lankan parliament had extended the state of emergency for a further month.<sup>7</sup> Numerous NGOs and individuals have complained that the armed forces and their paramilitary allies have arrested suspected LTTE sympathizers and not turned them over to the police, blurring the line between arrests and abductions. Other reports have alleged that security forces and paramilitaries often tortured and killed those arrested rather than follow legal safeguards.<sup>8</sup>
- 2.5** According to the USSD, there were credible reports of politically motivated and arbitrary and unlawful killings by government agents during 2008. Other reports of human rights abuses by the USSD pointed to disappearances, arbitrary arrests and detention, poor prison conditions, denial of fair public trial, government corruption and lack of transparency, infringement of freedom of movement and discrimination against minorities. However, during 2008, no military, police or paramilitary members were convicted of any domestic human rights abuses. For its part, the LTTE was reported to have engaged in torture, arbitrary arrest and detention, denied fair public trials and denied freedoms of speech,

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<sup>1</sup> Foreign and Commonwealth Office (FCO) Country Profile: Sri Lanka

<sup>2</sup> Foreign and Commonwealth Office (FCO) Country Profile: Sri Lanka

<sup>3</sup> COIS Sri Lanka Country Report June 2009

<sup>4</sup> House of Commons Paper – War and Peace in Sri Lanka

<sup>5</sup> USSD 2007 – released in March 2008

<sup>6</sup> COIS Sri Lanka Country Report June 2009

<sup>7</sup> Tamil Net – SL Parliament extends state of emergency for another month

<http://www.tamilnet.com/art.html?catid=13&artid=29566> – if you need a more neutral source:

[http://news.bbc.co.uk/1/hi/world/south\\_asia/8091840.stm](http://news.bbc.co.uk/1/hi/world/south_asia/8091840.stm)

<sup>8</sup> COIS Sri Lanka Country Report June 2009

press and assembly. The LTTE was also reported to be active in the South of Sri Lanka in attacking military and civilian targets.<sup>9</sup>

- 2.6** The South Asia Terrorism Portal reported that the number of killings in Sri Lanka in the last three years (including deaths of civilians, security forces and members of the LTTE) was: 4,126 in 2006; 4,377 in 2007; 11,144 in 2008 and between 1 January 2009 and 15 June 2009, 15549.<sup>10</sup> An estimated 75-80000 people are reported to have been killed over the course of the 26 year conflict.<sup>11</sup>

## **Humanitarian situation**

- 2.7** The UN has reported that between 27 October 2008 and 8 June 2009, 280,812 people crossed to Government controlled areas from the [former] conflict zone. They are reportedly hosted in camps in the districts of Jaffna, Vavuniya, Mannar and Trincomalee.<sup>12</sup> The humanitarian situation in the north is serious however, food and medicine is getting into the area. The UN humanitarian wing reported on 8 June 2009 that basic food supplies were distributed to around 280000 people in the north east following the end of the conflict. UNHCR and other aid agencies had provided emergency shelter including 6500 emergency structures and over 13000 tents with more erected as land was cleared. Water and sanitation had been a huge challenge but progress was being made with water being provided for over 75% of overall drinking and bathing needs. And as at 8 June, the UN World Food Programme had delivered nearly 880 metric tonnes of food to IDPs in Vavuniya.<sup>13</sup>
- 2.8** According to UNHCR, individuals who have fled the [former] conflict areas in the North have faced serious restrictions on their ability to move to other parts of the country and many, including family groups, have been forced to remain in high security camps and transit sites established by the Government in Mannar, Vavuniya and Jaffna districts. Human rights observers have expressed concern that the conditions in the camps are not consistent with international standards for the treatment of displaced persons, in particular the restrictions on freedom of movement, the presence of military personnel in the camps and the screening process to identify LTTE suspects, which have reportedly been associated with arrests and disappearances.<sup>14</sup>

## **3 Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Sri Lanka. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on 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.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political

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<sup>9</sup> USSD 2008 – released in February 2009

<sup>10</sup> Asia Terrorism Portal (SATP): 'Fatalities District Wise 2007', 'Fatalities District Wise 2006', 'Fatalities District Wise 2005' & 'Prominent Tamil political leaders assassinated since the Ceasefire Agreement'

<sup>11</sup> House of Commons Paper – War and Peace in Sri Lanka

<sup>12</sup> UN News Service – 8 June 2009

<sup>13</sup> UN News Service – 12 June 2009

<sup>14</sup> UNHCR Eligibility Guideline Sri Lanka – April 2009

opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing Credibility in Asylum and Human Rights Claims).

- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Instructions on Assessing Credibility in Asylum and Human Rights Claims.
- 3.5** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at: [http://www.ind.homeoffice.gov.uk/ind/en/home/laws\\_policy/policy\\_instructions/apis.html](http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html)
- 3.6 Former members, supporters or opponents of the LTTE fearing reprisals from LTTE**
- 3.6.1** Many applicants will claim asylum based on fear of ill-treatment amounting to persecution at the hands of the LTTE due to their past involvement with, and/or opposition to the mainstream LTTE. Some, particularly those who have aligned themselves with the Sri Lankan army military intelligence units, will state that they are targeted by the LTTE because they are perceived as 'defectors', whilst others fear being targeted because of their association with the breakaway TVMP group or because of their association with or links to the Eelam People's Democratic Party (EPDP). Others express a fear of being attacked by the LTTE in Colombo because they have engaged in, or are perceived by the LTTE to have engaged in, activity which is seen as 'disloyal' to the LTTE.
- 3.6.2** Treatment: The 26 year conflict between the LTTE and the Sri Lankan government, concluded on 18 May 2009 with a victory for the Sri Lanka government. Fighting had intensified between both sides from 2007 when the government made significant gains against the LTTE on the ground in the eastern regions taking control of Batticaloa and Thoppigala on 11 July 2007, signifying the end of LTTE influence in that area. In January 2008, a ceasefire agreement (CFA) between the LTTE and the government was formally annulled by the government. Military operations in the northern districts under the control of the LTTE stepped up a pace at the end of 2008 when the government gained control of Kilinochchi (the LTTE's administrative headquarter since 1998), the Jaffna A9 highway and Mullativu town. The final military act was played out in just 300 square metres of territory along the western boundary of the Mullativu lagoon.<sup>15</sup> Most, if not all, of the LTTE's leadership, including its commander in chief, Vellupillai Prabhakaran, were killed.<sup>16</sup>
- 3.6.3** According to Human Rights Watch, the LTTE has frequently targeted civilians with bombs and remote-controlled landmines; killed perceived political opponents including many Tamil politicians, journalists, and members of rival organizations; and, has forcibly recruited Tamils into its forces, many of them children.
- 3.6.4** The BBC has reported that whilst the LTTE movement is over as a conventional military force and its leadership has been decimated, scattered guerrilla-style attacks are still likely to occur although it is not clear how many rebels may have escaped from the former conflict zone in recent months.<sup>17</sup>

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<sup>15</sup> COIS Sri Lanka Country Report June 2009

<sup>16</sup> House of Commons Paper – War and Peace in Sri Lanka

<sup>17</sup> BBC – Q&A Sri Lanka conflict - [http://news.bbc.co.uk/1/hi/world/south\\_asia/2405347.stm](http://news.bbc.co.uk/1/hi/world/south_asia/2405347.stm)

- 3.6.5** In March 2004, the LTTE's eastern commander, Colonel Karuna, broke away from the mainstream LTTE. Much of the breakaway "Karuna/TMVP" (Tamil National Party) group was wiped out and disbanded during 2004 in a military counter-offensive by the mainstream LTTE. However, it was rebuilt during 2004-05 by Karuna and his close associates. Initially a paramilitary group supported by the Sri Lankan authorities in its fight against the LTTE, the TMVP was registered as a political party in 2007. Between late 2006 and early 2007, the TMVP group fought together with the Sri Lankan armed forces against the LTTE in the Eastern Province.<sup>18</sup> Under deputy leader Sivanesanathurai Chandrakanthan (a.k.a. Pillayan), the TVMP contested their first provincial elections in 2007, winning a majority in the Eastern Provincial Council.<sup>19</sup> Pillayan was named Chief Minister for the East and is now the leader of the TVMP.<sup>20</sup>
- 3.6.6** In May 2007, the TVMP was reported to have become further factionalised when the deputy leader of the Karuna group, Pillayan, became involved in a dispute with Karuna. The dispute escalated into violence and Karuna reportedly ordered his loyalists to hunt down and kill Pillayan. In November 2008, Human Rights Watch reported deepening tensions and violent infighting within the TVMP, particularly between the Karuna and Pillayan factions.<sup>21</sup> It was later reported that Karuna had joined the Sri Lanka Freedom Party as MP Vinayagamoorthy Muralidharan with a large following of Tamils from the East. Most recently, he was appointed as Minister of National Integration and Reconciliation.<sup>22</sup>
- 3.6.7** The ICG (Internal Crisis Group) has reported that during the second half of 2008 and early 2009 there was a growing number of LTTE attacks in the east, both against the TMVP, including some apparently successful attempts to infiltrate TMVP offices, and against the police, army and civil defence personnel. However, there was also credible evidence to suggest that many of those killed were targeted by the TMVP and government security forces as LTTE members or supporters, either as part of the government's general counter-insurgency strategy or in response to specific LTTE attacks on, or infiltration of, the TMVP.<sup>23</sup>
- 3.6.8** According to UNHCR, while the immediate impact of the LTTE on the lives of civilians in the East has been greatly reduced, the TMVP, which now effectively controls Batticaloa and other parts of the East, is reported to engage in terror and crime. Incidents of TMVP involvement in abductions, child recruitment, robberies and repression of dissent are widely documented. It is also reported that TMVP forces are responsible for extrajudicial killings, deaths in custody and abductions, which have apparently been carried out with the knowledge and tacit agreement of Government actors and local authorities.<sup>24</sup> Abductions and forced recruitment by the TMVP group have occurred in IDP camps in Batticaloa and Trincomalee districts. A series of abductions of young women in Batticaloa district were believed to be the work of local TMVP cadres.<sup>24</sup>
- 3.6.9** The Eelam People's Democratic Party (EPDP) is a Tamil political group formed in 1986, which has fought alongside the Sri Lankan army against the LTTE since 1990. It supports the UFPA and won one seat at the April 2004 elections for the National Assembly. In March 2006, the UN Special Rapporteur reported claims by EPDP representatives that its cadre function had been disarmed and that it now functioned solely as a political party but that compliance had not been perfect. The EPDP has recorded that 75 of its members have been killed by the LTTE since the ceasefire agreement April 2003. These records include 14 deaths in 2003, 12 in 2004, 18 in 2005, 19 in 2006, 11 in 2007 and 3 in 2008 up to and including 19 June 2008.<sup>25</sup>

<sup>18</sup> USSD 2008 released in February 2009 & COIS Sri Lanka Country Report February 2009

<sup>19</sup> Official website of the Sri Lankan government - <http://www.priu.gov.lk/ProvCouncils/ProvincialCouncils.html>

<sup>20</sup> COIS Sri Lanka Country Report June 2009 – Annex C

<sup>21</sup> COIS Sri Lanka Country Report June 2009

<sup>22</sup> Karuna joins Govt; leads over 2000 Tamils from East to SLFP – 11 March 2009

[http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca200903/20090311karuna\\_joins\\_govt.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca200903/20090311karuna_joins_govt.htm)

<sup>23</sup> COIS Sri Lanka Country Report June 2009

<sup>24</sup> COIS Sri Lanka Country Report June 2009

<sup>25</sup> COIS Sri Lanka Country Report June 2009 Annex C & EPDP News

- 3.6.10 Sufficiency of protection.** The 65,000 member police force, including the 5,850 member paramilitary Special Task Force is under the control of the Ministry of Defence. There is no independent authority to investigate complaints. Senior officials in the police force handle complaints against the police, as does the civilian-staffed National Police Commission (NPC). In 2008, few police officers serving Tamil majority areas were Tamil and generally did not speak Tamil. However, through October 2008, the police hired 175 Tamil speaking policemen to serve in the east. A Special Task Force is the paramilitary arm of the Sri Lankan police deployed essentially for counter terrorist and counter insurgency operations within the country.<sup>26</sup>
- 3.6.11** The Sri Lankan National Police Commission (NPC), with an entirely civilian staff, was set up in November 2002 and authorised to appoint, promote, transfer, discipline, and dismiss all police officers, except for the inspector general of police. The NPC was also authorised to establish procedures to investigate public complaints against the police.<sup>27</sup>
- 3.6.12** The Human Rights Commission of Sri Lanka (SLHRC), was established in 1997 to carry out investigations into cases of torture, 'disappearances', political killings and other human rights violations. By statute, the HRC has wide powers and resources but has not always been that effective.<sup>28</sup> The unit did not have enough staff or resources to process its caseload of pending complaints and did not enjoy the full cooperation of the Sri Lankan government. In December 2007, the International Coordinating Committee of National Human Rights Institutions downgraded the SLHRC to observer status, citing government interference in the work of the SLHRC. The SLHRC took no action to investigate the more than 200 cases reported to its Jaffna Branch since 2006 and its torture prevention monitoring unit established in 2004, ceased functioning in 2006 because of inadequate funding.<sup>29</sup>
- 3.6.13** Following the introduction of the Emergency Regulations in August 2005 round ups and arrests of Tamils in 'cordon and search operations' have taken place. These appear to be to do with operations undertaken in the general security round. Most of those detained, generally young Tamil males, are taken into custody because they are unable to produce ID or explain the reason for them being in a particular area. According to the British High Commission in Colombo, the operations do appear to target those in casual employment or with temporary accommodation, but whilst a proportion of those detained do end up in longer term detention, most are released quickly.<sup>30</sup> Tamil net has reported that the number of cordon and search operations in Colombo have increased in recent times including some larger scale operations, for example, on 28 March when 301 persons were arrested including 257 Tamils in a joint search conducted in Gampaha, and on 11 April 2009 when about 50 civilians, including 40 Tamils were arrested in Colombo division and detained in respective police stations for further inquiry. With regard to the April operation, detained civilians had failed to prove their identity and justify their presence in the location. Most of the arrested Tamils were residents of Jaffna.<sup>31</sup>
- 3.6.14** Under the emergency regulations, the armed forces are required to turn over suspects to the police within 24 hours. However, numerous NGOs and individuals have complained that the armed forces and their paramilitary allies have arrested suspected LTTE sympathizers and not turned them over to the police, blurring the line between arrests and abductions. Other reports have alleged that security forces and paramilitaries often tortured and killed those arrested rather than follow legal safeguards.<sup>32</sup>
- 3.6.15** The Government announced on 27 June 2007 that it had established a centre to gather information about abductions/ enforced disappearances that occurred in Colombo and its

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<sup>26</sup> COIS Sri Lanka Country Report June 2009 (Human Rights: Security Forces)

<sup>27</sup> NPC website – <http://www.npc.gov.lk/aboutus.html>

<sup>28</sup> USSD 2007- released in March 2008

<sup>29</sup> USSD 2008 - released in February 2009

<sup>30</sup> COIS Sri Lanka Country Report June 2009 (Incidents in 2007)

<sup>31</sup> COIS Sri Lanka Country Report June 2009

<sup>32</sup> COIS Sri Lanka Country Report June 2009



suburbs and that two special operation cells had been set up to collect information and take immediate action on complaints of abductions and extortion in Colombo and its suburbs. The two units would function 24 hours a day and operate from the Presidential Secretariat and the Police.<sup>33</sup> Human Rights Watch, however, has also reported that instead of diligently investigating and prosecuting enforced disappearances the government continues to downplay the problem and that it remains unaware of any serious action by the government to address the hundreds of new 'disappearances' of the past few years, the great majority of which remain unresolved.<sup>34</sup> Delays in investigations have also been reported by the British High Commission in Colombo.

- 3.6.16** According to UNHCR, acts of abduction and kidnapping continue to be a serious problem in Sri Lanka, particularly in the North and East of the country and in Colombo. Many of the abductions involve civilians who are suspected to be LTTE members or sympathizers. Reported abductions have also been linked to practices of forced recruitment, particularly by the LTTE in the North and the TMVP in the East. Kidnappings for ransom have also been reported. The vast majority of reported abductions have involved Tamils, but Muslims and Sinhalese have also been targeted
- 3.6.17** Other monitoring organizations have advised that after declining in mid-2007, the number of disappearances increased in 2008 to more than 500. On 8 November 2008, the chairman of the Presidential Commission on Disappearances, retired High Court Judge Mahanama Tilakaratne stated that 1,100 persons missing or abducted in the past two years were still unaccounted for. Witnesses and potential victims identified the perpetrators of many abductions as Tamil-speaking armed men using white vans without license plates. However, there have also been reports that in many of the cases documented by human rights groups there are indications of involvement by Government actors, including security forces, the army, navy, or police. The incidents reported have frequently followed security searches, interviews or other contact with police or security forces and involve perpetrators who are deliberately hiding their identity. The government generally failed to investigate such incidents.<sup>35</sup>
- 3.6.18** In a report dated 17 June 2009, Amnesty stated that the Presidential Commission of Inquiry established to look at serious violations of human rights committed since 2006 had been disbanded as no further extensions to its mandate had been granted. Of the 16 cases referred the Inquiry, only 7 were investigated and 5 finalised but not a single one had resulted in any justice. According to Amnesty, the failure of the Commission highlighted the Sri Lankan government's lack of resources and the will to provide real accountability for human rights violations.<sup>36</sup>
- 3.6.19 *Internal relocation.*** Careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution by the LTTE. 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 Sri Lanka where they would not be at real risk from the LTTE and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 3.6.20** The Sri Lankan Constitution grants every citizen 'freedom of movement', however, the government severely restricted this right at times. For example, the government imposed more stringent checks on travellers from the north and the east and on movement in Colombo. In Colombo, police reportedly refused to register Tamils from the north and the east, as required by Emergency Regulation 23, sometimes forcing them to return to their home areas. Tamils were subject to onerous restrictions on fishing in Jaffna and

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<sup>33</sup> The official government news portal of Sri Lanka - Government establishes a new information centre to avert abductions – 27 June 2007

<sup>34</sup> COIS Sri Lanka Country Report June 2009 (Disappearances/ Abductions)

<sup>35</sup> COIS Sri Lanka Country Report June 2009

<sup>36</sup> Amnesty – Presidential Commission of Inquiry fails citizens – 17 June 2009

Trincomalee and government and TVMP operated checkpoints in the east of Sri Lanka also impeded the free movement of residents especially Tamils.<sup>37</sup>

- 3.6.21** The government required Tamils, especially those living in Jaffna, to obtain special passes issued by security forces to move around the country. Unlike other citizens, ethnic Tamil's identification cards were printed in both Sinhalese and Tamil, allowing security forces immediately to determine who was an ethnic Tamil. Citizens of Jaffna were required to obtain permission from the army's Civil Affairs unit, or in some cases from the EPDP, to leave Jaffna. Reportedly, the waiting list was more than five months long. Curfews imposed by the army also restricted the movement of Jaffna's citizens.<sup>38</sup>
- 3.6.22** UNHCR has reported that individuals [Tamils] held in Government camps in Mannar, Vavuniya and Jaffna districts following the conclusion of the conflict face restrictions on freedom of movement in and from the region, the presence of military personnel in the camps and the screening process to identify LTTE suspects, which has reportedly been associated with arrests and disappearances. Restrictions on travel faced by those from the North and the East also include road closures, security checks and curfews imposed by the military, security and police forces. And ethnic Tamils from the North and the East seeking to enter Colombo have encountered disproportionate and discriminatory restrictions on their movement and ability to reside in Colombo.<sup>39</sup>
- 3.6.23** In a letter from the British High Commission in Colombo it was reported that on 18 September 2008, the Sri Lankan Government announced a requirement for all persons who had arrived in Western Province within the previous 5 years from the North and East of the country to register at their local police station, or assigned schools, temples or other public buildings, by the 21 September 2008. The police estimated that there were roughly 100,000 people who fell into this category. Security officials at the time said that the measures were brought about to prevent the infiltration of terrorists and ensure the public was protected. Since this initial registration there have been further announcements by the Government and further dates set aside for those persons that had not registered previously to come forward. Criticisms levelled at the process have included that those registering were given no receipt or proof that they had registered. There were also delays in the process brought about by Sinhala speaking officers unable to communicate with those registering who only spoke Tamil.<sup>40</sup>

#### **3.6.24 Caselaw.**

**PS [2004] CG 00297** The Tribunal:

- restated that Tamils from the north and east of Sri Lanka, under the direct control of the LTTE, and from those areas where the degree of control has fluctuated, can in general terms safely relocate to Colombo to avoid localised fear of the LTTE. Travel restrictions have been greatly and progressively eased since the ceasefire, with a reduction in the numbers of checkpoints.
- accepted that it is physically possible for LTTE members to travel to Colombo although, in times when they have provoked public concern by their actions there, they would face heightened security measures, albeit not on the scale of the former cordon and search operations regularly carried out prior to the ceasefire. Nevertheless, it is clear that they do not choose to do so on an indiscriminate basis in order to find all those against whom they may harbour some suspicion.
- concluded that 'As we have already observed, those who the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition

<sup>37</sup> USSD 2009- released in February 2009

<sup>38</sup> USSD 2009 - released in February 2009

<sup>39</sup> UNHCR Eligibility Guidelines Sri Lanka – April 2009

<sup>40</sup> COIS Sri Lanka Country Report June 2009



activists, or those whom they would see are renegades or traitors to the LTTE' (p71) and for those who are not high profile 'there is no arguable basis for saying that the Sri Lankan state does not provide a sufficiency of protection to the generality of Tamils having a localised fear of the LTTE in their home area.' (p72).

**AN & SS (Tamils-Colombo-risk?) Sri Lanka CG [2008] UKAIT 00063.** The AIT found that since the breakdown of the ceasefire, heightened security in Colombo has restricted the operations of the LTTE who are focusing on high profile targets. Background evidence does not show that Tamils in Colombo who have stopped supporting the Tigers, or who support parties opposed to them, are at real risk of reprisals, absent some features bringing them to prominence and the conclusion to this effect in PS Sri Lanka CG [2004] is updated and superseded by this determination. And:

- Since the breakdown of the ceasefire the operating capacity of the LTTE has been restricted and they are concentrating their attacks on individuals with a high political or military profile as well as members of the security forces generally and upon military installations.
- There is scarcely any evidence that low level supporters/ opponents of the LTTE who have left their ranks have been targeted in Colombo since 2004
- There is no solid evidence that the LTTE maintain a computerised database of opponents and defectors against which a check may be run when a person comes to their notice.
- For a person at risk in their home area in the North or the East but who is not risk in Colombo, relocation to Colombo will not in general be unduly harsh. Young Tamil men are likely to be stopped at checkpoints or rounded up in cordon and search operations or in raids upon lodges but most detainees are released in a fairly short time and those arriving without a national ID card should be able to get a replacement without too much difficulty. Abductions and kidnappings have tended to focus on businessmen and those about to leave the country although there is recent evidence that LTTE supporters are being abducted by paramilitaries

**3.6.25 Conclusion** Recent country information does indicate that displaced persons in Government camps face tight restrictions on freedom of movement out of those camps. This should however not preclude consideration of the option of internal relocation. It is clear that some individuals have been able to relocate from territory in the north of Sri Lanka to areas in the South including Colombo and each case should be considered on its individual merits. These include 3000 elderly and vulnerable persons of the almost 300000 displaced by the recent phase of the conflict in the North.<sup>41</sup> Whilst registration restrictions apply to Tamils seeking to relocate to other areas like Colombo, there is generally freedom of movement within Sri Lanka and caseowners should consider whether internal relocation is a viable option to escape a threat posed by the LTTE.

**3.6.26** Caseowners should also take into account that because the conflict with the LTTE has now concluded, its leadership decimated and movement as a conventional military force over, the ability of the LTTE to track down its opponents and former members is now going to be more limited than it was previously. Disappearances do continue to take place some which are attributed to the LTTE and which the Sri Lankan authorities have been unable to counter entirely. There has been general criticism of the Sri Lankan authorities in terms of their willingness/ ability to investigate and prosecute those who commit violent acts within Sri Lanka. Therefore, in addition to carefully establishing the applicant's previous involvement with, and/or level of opposition to the mainstream LTTE, case owners must take care to distinguish between applicants expressing fear of LTTE persecution and an individual's ability to seek redress through the police authorities: see below.

**3.6.27** Low level supporters or members of a Tamil group, including the EPDP and TMVP or non-Tamil, political party opposed to the LTTE who have never had a previous association with the LTTE are unlikely to be the target of reprisals by the LTTE. Those whom the LTTE has on the objective evidence targeted most recently have all been high profile activists

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<sup>41</sup> Ocha online - <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1111729>

opposed to the LTTE. In the event that an applicant did consider themselves at risk, the Sri Lankan Government are both willing and able to provide a sufficiency of protection.

- 3.6.28** Prominent past supporters or members of Tamil political parties including the EPDP and TMVP have been targeted by the LTTE in Colombo. Where an individual applicant is able to demonstrate that they are of such high political profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum. Although how they will be targeted given the current state of the LTTE and equally how they will be able to show that they have a sufficient profile is problematic
- 3.6.29** Former low level members or supporters of the LTTE who have now aligned themselves with the Government against the LTTE, (or who are perceived by the LTTE to be opponents, whether or not they actually are) are unlikely to be the target of reprisals by the LTTE. There is no evidence that the LTTE pursue people who refuse to carry out low level ancillary activities (such as cooks, book keepers etc) for the mainstream LTTE. Such individuals would be able to seek redress from the Sri Lankan Government and applications under this category therefore are likely to fall for refusal.
- 3.6.30** In cases involving LTTE 'defectors', 'traitors' or 'renegades', case owners need to carefully establish which of these terms applies to the claimant. 'Defectors' who have assisted the Sri Lankan authorities at a strategic level (for example those who have aligned themselves with the Sri Lankan army military intelligence units) are at risk of being targeted by the LTTE in Colombo. In such circumstances, the Sri Lankan Government are generally able to provide sufficient protection. However, where an individual applicant is able to demonstrate that they are of such high political profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum. (see 3.6.28 above) If the applicant has never been an LTTE member and their actions do not involve leaving the LTTE and subsequently joining another organisation, or the applicant cannot demonstrate significant previous commitment to the LTTE or subsequent formal membership or ongoing and regular assistance to LTTE opposition groups or the Sri Lankan security forces, then the applicant's activities are unlikely to result in them being targeted by the LTTE in Colombo. The terms 'traitor' or 'renegade' are used in relation to those persons who fear being attacked by the LTTE in Colombo because they have engaged in, or the LTTE think they have been engaged in, activity which is seen as disloyal to the LTTE. Those whom the LTTE have targeted in Colombo since the ceasefire have all been high profile activists. It is not the case that all those who have committed or are thought to have committed any 'treacherous' act or acts damaging to the LTTE are at risk of being targeted. However, where an individual applicant is able to demonstrate that they are an activist of such high profile (as above) that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.
- 3.6.31** Those who fear persecution by the LTTE because of their association to the TVMP are unlikely to establish a need for international protection unless the applicant's association could lead the mainstream LTTE to identify them as a close associate of Pillayan. Country information indicates that the LTTE presence in the East (where the TVMP is most dominant) has considerably reduced. Few applicants are therefore likely to establish that their association to the TVMP gives rise to a fear of mistreatment. However, where an individual applicant is able to demonstrate that they were closely associated with the various TVMP factional leaders Karuna/ Pillayan and that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.

### **3.7 Fear of persecution by the Sri Lankan authorities**

- 3.7.1** Many applicants will claim asylum based on ill-treatment amounting to persecution at the hands of the Sri Lankan authorities due to their past involvement with the LTTE or other political organisations opposed to the Government.
- 3.7.2** **Treatment.** In August 2005, following the assassination of the foreign minister, parliament approved emergency regulations giving power of arrest to members of the armed forces,

who are required to turn suspects over to the police within 24 hours. Individuals arrested under the emergency regulations may be detained for up one year without trial.<sup>42</sup> Following the introduction of the Emergency Regulations, round ups and arrests of Tamils in 'cordon and search operations' have taken place in and around Colombo. These appear to be to do with operations undertaken in the general security round. Most of those detained, generally young Tamil males, are taken into custody because they are unable to produce ID or explain the reason for them being in a particular area. According to the British High Commission in Colombo, the operations do appear to target those in casual employment or with temporary accommodation, but whilst a proportion of those detained do end up in longer term detention, most are released quickly. A new emergency regulation introduced in August 2008 gives the secretary of defense power to detain persons for 18 months without producing them before the courts.<sup>43</sup>

- 3.7.3** In its 2009 report, Amnesty recorded that security forces in Colombo arrested an increasing number of Tamils under emergency regulations in cordon and search operations and that over 1000 Tamils were in detention without charge, some for several years. In September 2008, the police ordered all Tamils who had arrived from the north and east in the last five years to register with the authorities. Tamils holding National Identity Cards from the north and the east were most likely to be arrested.<sup>44</sup> Tamil net has also reported that the number of cordon and search operations in Colombo have increased in recent times including some larger scale operations, for example, on 28 March 2009 when 301 persons were arrested including 257 Tamils in a joint search conducted in Gampaha, and on 11 April 2009 when about 50 civilians, including 40 Tamils were arrested in Colombo division and detained in respective police stations for further inquiry. With regard to the April operation, detained civilians had failed to prove their identity and justify their presence in the location and most of the arrested Tamils were residents of Jaffna.<sup>45</sup>
- 3.7.4** No statistics were available on the number of arrests made during 2008 under the emergency regulations. It was reported that several thousand individuals were detained at least temporarily under the emergency regulations during 2007, the majority of whom were released within 24 hours of their arrest.
- 3.7.5** According to Human Rights Watch, detainees under the Emergency Regulations were kept in regular prisons as well as police stations and other detention facilities, including those run by the Terrorism Investigation Division. The government failed to provide complete lists of those detained, the charges they faced, or the locations where they were held as, under the Emergency Regulations, there was no requirement to publish the places where people were held.<sup>46</sup>
- 3.7.6** Under the emergency regulations, the armed forces are required to turn over suspects to the police within 24 hours. However, numerous NGOs and individuals have complained that the armed forces and their paramilitary allies have arrested suspected LTTE sympathizers and not turned them over to the police, blurring the line between arrests and abductions. Other reports have alleged that security forces and paramilitaries often tortured and killed those arrested rather than follow legal safeguards.<sup>47</sup>
- 3.7.7** In its' study of disappearances in Sri Lanka, Human Rights Watch commented that some of those who had disappeared were known to have been killed and others surfaced in detention or were otherwise found but the majority remained unaccounted for. Disappearances occurred mainly in the conflict areas of the North and East (Jaffna, Mannar, Batticaloa, Ampara and Vavuniya) though a large number of cases were also reported in Colombo. The vast majority of victims of enforced disappearances were young male ethnic Tamils on account of their

<sup>42</sup> USSD 2008 report – released February 2009

<sup>43</sup> COIS Sri Lanka Country Report June 2009

<sup>44</sup> COIS Sri Lanka Country Report June 2009

<sup>45</sup> COIS Sri Lanka Country Report June 2009

<sup>46</sup> COIS Sri Lanka Country Report June 2009

<sup>47</sup> COIS Sri Lanka Country Report June 2009

alleged membership or affiliation to the LTTE, although Muslims and Sinhalese were also targeted. In addition, in the great majority of cases of reported disappearances/ abductions, the evidence showed the involvement of the government security forces (army, navy and police) who were facilitated by the emergency regulations.<sup>48</sup>

- 3.7.8** In its' 2009 report, Amnesty recorded that the EPDP was reportedly responsible for enforced disappearances and that the TMVP continued to carry out hostage taking for ransoms and enforced disappearances.<sup>49</sup> The USSD has also reported that in Jaffna the pro-government paramilitary EPDP used a network of informants and worked with military intelligence and other government security forces to identify, abduct, and kill alleged LTTE sympathizers or operatives. The TMVP used a similar network of informants in the east to discover and eliminate possible LTTE operatives or sympathizers. In addition, both the TMVP, the EPDP, and other paramilitary organisations ran extortion rings and allegedly killed civilians, in many cases following abductions. Reportedly, the government provided protection, intelligence, and military training to TMVP and EPDP cadres who committed extra judicial killings, abductions, extortion and torture.<sup>50</sup>
- 3.7.9** The Guardian reporting on individuals held in military camps in the north has stated that officials and military officers at the camps claimed that the civilians were there for their own safety, for the safety of the rest of the population and because most were involved in some sort of activity for the LTTE. Some officials had indicated that screening of the civilians was taking place inside the camps, others that it was not. And, despite acknowledging that they had a list of known LTTE members, the authorities maintained that they needed more time to identify former fighters.<sup>51</sup>
- 3.7.10 *Sufficiency of protection.*** Where this category of claimants fear is of ill-treatment/persecution by the state authorities they cannot apply to these authorities for protection. Information on the avenues of complaint against the actions of the police available within Sri Lanka is included in paragraphs 3.6.7 - 3.6.9 above.
- 3.7.11** According to Human Rights Watch, the United Nations and other international agencies have had little or no access to the screening process of the 9000 or so LTTE fighters/ persons with suspected LTTE connections currently in detention in the north of the country and the government has, in many cases, failed to provide families of the detained with any information about the fate and whereabouts of their relatives.<sup>52</sup>

#### *Torture*

- 3.7.12** Impunity, particularly for cases of police torture, remains a serious problem in Sri Lanka. Following his visit to Sri Lanka from 1 to 8 October 2007, the UN Special Rapporteur reported that torture was widely practised and that there were consistent and credible allegations of ill-treatment by the police during inquiries in order to extract confessions or obtain information in relation to other criminal offences.<sup>53</sup> The UN Special Rapporteur also attributed the lack of convictions for torture to the absence of effective investigation, inadequate protection for victims and witnesses of torture and an excessive minimum sentence for torture. He noted that the police used threats of violence and fabrication of criminal cases to prevent the victims of torture by police officers from filing complaints. Furthermore, he advised that detainees reported that magistrates did not provide them with an opportunity to complain about police torture while the perpetrators often accompanied the victims to courts and remained present during medical examinations.<sup>54</sup>

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<sup>48</sup> USSD 2008 - released February June 2009

<sup>49</sup> COIS Sri Lanka Country Report June 2009

<sup>50</sup> COIS Sri Lanka Country Report June 2009

<sup>51</sup> COIS Sri Lanka Country Report June 2009

<sup>52</sup> Human Rights Watch – Sri Lanka Avoid a Post War Witch Hunt 3 June

<sup>53</sup> COIS Sri Lanka Country Report 20095 (Torture)

<sup>54</sup> USSD 2007 – released March 2008

**3.7.13** The Government has undertaken steps to reduce torture in police custody and there are avenues of complaint available via the SLHRC or the NPC. However, human rights organisations and NGOs have criticised Sri Lanka's law enforcement agencies and judicial system for failing to eliminate human rights violations reportedly carried out by the police and armed forces. No accurate, publicly available statistics on the number of reported torture cases were available for 2008.<sup>55</sup>

*Enforced disappearances/ abductions*

**3.7.14** According to the USSD, international monitoring organisations reported that numbers of enforced disappearances declined in mid 2007 but increased during 2008 to more than 500. And on 8 November 2008, the Chairman of the Presidential Commission on disappearances stated that 1,100 persons missing or abducted within the last two years in Sri Lanka were still unaccounted for.<sup>56</sup>

**3.7.15** The Government announced on 27 June 2007 that it had established a centre to gather information about abductions/ enforced disappearances that occurred in Colombo and its suburbs and that two special operation cells had been set up to collect information and take immediate action on complaints of abductions and extortion in Colombo and its suburbs. The two units would function 24 hours a day and operate from the Presidential Secretariat and the Police.<sup>57</sup> Human Rights Watch, however, has reported that instead of diligently investigating and prosecuting enforced disappearances the government continues to downplay the problem. Delays in investigations have also been reported by the British High Commission in Colombo. Indeed President Rajapaksa reported at the end of 2007 that of the 350 abductees reported to the government in March 2007, 21 persons were traced alive and the remains of 4 others were identified but that the 325 other cases remained unresolved.<sup>58</sup>

**3.7.16** Despite the Government's 'zero tolerance' policy on torture,<sup>59</sup> there remain concerns that the measures being taken by the Government cannot be said to be ensuring that there are adequate means of redress or protection against torture in police custody. And, whilst some cases of enforced disappearance/ abduction are investigated, there is generally no effective investigation on the part of the authorities of cases of enforced disappearance or abduction. As a result, there cannot be said to be a sufficiency of protection for those who can show that they face a serious risk from police actions in Sri Lanka.

**3.7.17 *Internal relocation.*** This category of applicants' fear is of ill treatment/persecution by the state authorities. This does not mean that caseowners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

*"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."*

**3.7.18** Very careful consideration must be given to whether internal relocation would be an effective 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, from the state, for example, from individual police

<sup>55</sup> USSD 2008 - released February 2009

<sup>56</sup> USSD 2008 - released February 2009

<sup>57</sup> The official government news portal of Sri Lanka - Government establishes a new information centre to avert abductions - 27 June 2007

[http://www.news.lk/index.php?option=com\\_content&task=view&id=2749&Itemid=44](http://www.news.lk/index.php?option=com_content&task=view&id=2749&Itemid=44)

<sup>58</sup> COIS Sri Lanka Country Report February 2009 (Human Rights: Disappearances)

<sup>59</sup> Ministry of Disaster Management and Human Rights: Human Rights Ministry Response to Special Rapporteur on Torture's Statement (dated 31 October 2007)

officer actions, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

- 3.7.19** The Sri Lankan Constitution grants every citizen 'freedom of movement', however, the government severely restricted this right at times. For example, the government imposed more stringent checks on travellers from the north and the east and on movement in Colombo. In Colombo, police reportedly refused to register Tamils from the north and the east, as required by Emergency Regulation 23, sometimes forcing them to return to their home areas. Tamils were subject to onerous restrictions on fishing in Jaffna and Trincomalee and government and TVMP operated checkpoints in the east of Sri Lanka also impeded the free movement of residents especially Tamils.<sup>60</sup>
- 3.7.20** The government required Tamils, especially those living in Jaffna, to obtain special passes issued by security forces to move around the country. Unlike other citizens, ethnic Tamil's identification cards were printed in both Sinhalese and Tamil, allowing security forces immediately to determine who was an ethnic Tamil. Citizens of Jaffna were required to obtain permission from the army's Civil Affairs unit, or in some cases from the EPDP, to leave Jaffna. Reportedly, the waiting list was more than five months long. Curfews imposed by the army also restricted the movement of Jaffna's citizens.<sup>61</sup>
- 3.7.21** UNHCR has reported that individuals [Tamils] held in Government camps in Mannar, Vavuniya and Jaffna districts following the conclusion of the conflict, face restrictions on freedom of movement in and from the region, the presence of military personnel in the camps and the screening process to identify LTTE suspects, which has reportedly been associated with arrests and disappearances. Restrictions on travel faced by those from the North and the East also include road closures, security checks and curfews imposed by the military, security and police forces. And ethnic Tamils from the North and the East seeking to enter Colombo have encountered disproportionate and discriminatory restrictions on their movement and ability to reside in Colombo.<sup>62</sup>
- 3.7.22** In a letter from the British High Commission in Colombo it was reported that on 18 September 2008, the Sri Lankan Government announced a requirement for all persons who had arrived in Western Province within the previous 5 years from the North and East of the country to register at their local police station, or assigned schools, temples or other public buildings, by the 21 September 2008. The police estimated that there were roughly 100,000 people who fell into this category. Security officials at the time said that the measures were brought about to prevent the infiltration of terrorists and ensure the public was protected. Since this initial registration there have been further announcements by the Government and further dates set aside for those persons that had not registered previously to come forward. Criticisms levelled at the process have included that those registering were given no receipt or proof that they had registered. There were also delays in the process brought about by Sinhala speaking officers unable to communicate with those registering who only spoke Tamil.<sup>63</sup>

### **3.7.23 Caselaw.**

**CG [2007] UKIAT 00076 LP.** The Tribunal found that (1) Tamils are not per se at risk of serious harm from the Sri Lankan authorities in Colombo. A number of factors might increase the risk, including but not limited to: a previous record as a suspected or actual LTTE member; a previous criminal record and/ or outstanding arrest warrant; bail jumping and/ or escaping from custody; having signed a confession or a similar document; having been asked by the security forces to become an informer; the presence of scarring; return from London or other centre of LTTE fundraising; illegal departure from Sri Lanka; lack of an ID card or other documentation; having made an asylum claim abroad; having relatives in the LTTE. The Tribunal found that in every case, those factors and the weight to be

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<sup>60</sup> USSD 2008 - released February 2009

<sup>61</sup> USSD 2008

<sup>62</sup> UNHCR Eligibility Guidelines Sri Lanka – April 2009

<sup>63</sup> COIS Sri Lanka Country Report June 2009

ascribed to them, individually and cumulatively, must be considered in the light of the facts of each case but they are not intended to be a checklist. (2) If a person is actively wanted by the police and/or named on a Watched or Wanted list held at Colombo airport they may be at risk of detention at the airport. (3) Otherwise, the majority of returning failed asylum seekers are processed relatively quickly and with no difficulty beyond some possible harassment. (4) Tamils in Colombo are at increased risk of being stopped at checkpoints, in a cordon and search operation, or of being the subject of a raid on a lodge where they are staying. In general, the risk again is no more than harassment and should not cause any lasting difficulty, but Tamils who have recently returned to Sri Lanka and have not yet renewed their Sri Lankan identity documents will be subject to more investigation and the factors listed above may then come into play. (5) Returning Tamils should be able to establish the fact of their recent return during the short period necessary for new identity documents to be procured. (6) A person who cannot establish that he is at real risk of persecution in his home area is not a refugee; but his appeal may succeed under Article 3 of the ECHR, or he may be entitled to humanitarian protection if he can establish he would be at risk in the part of the country to which he will be returned. (7) The weight to be given to expert evidence (individual or country) and country background evidence is dependent upon the quality of the raw data from which it is drawn and the quality of the filtering process to which that data has been subjected. Sources should be given whenever possible. (8) The determinations about Sri Lanka listed in paragraph 226 are replaced as country guidance by this determination. They continue to be reported cases.

**AN & SS (Tamils-Colombo-risk?) Sri Lanka CG [2008] UKAIT 00063.** The AIT said that the country guidance in LP [2007] remained valid and endorsed the suggestion made by Collins J that the 12 risk factors listed in LP could usefully be divided into background factors. These background factors in themselves did not present a real risk to failed asylum seekers in Colombo but may exacerbate the situation when they combine with the 12 risk factors identified in LP. The AIT also found that:

- The National Intelligence Bureau in Sri Lanka maintains a computerized database of persons who pose a threat, while immigration officers at Bandaranaike International Airport use a computer system which can flag up whether a newly arrived passenger is on the wanted or stop list. However there is no firm evidence that everyone who has ever been detained by the police or army is likely to be on the database.
- Failed asylum seekers in Colombo who arrive without a National Identity Card are usually able to obtain one on production of a birth certificate which is also usually easy to obtain
- Roadside checkpoints and raids upon lodges do not in general create a real risk of persecution or serious ill treatment. Most of those held are released within a reasonably short period of time and the Supreme Court has intervened to curb the excesses of the security forces.
- Abductions and kidnappings have been carried out by a wide variety of groups, mostly pro government militias and criminal gangs but the scale of these disappearances does not affect failed asylum seekers arriving in Colombo. Abductions and killings have tended to focus on businessmen and those about to leave the country, although there is recent evidence of LTTE supporters being abducted by pro government paramilitaries.
- For person at risk in their home area but who is not at risk in Colombo, relocation to the capital will in general not be unduly harsh

**NA v United Kingdom ECHR (2008) – risk on return to Sri Lanka for Tamils.** The Court endorsed existing country guidance (LP and PS) on risk to Tamils in Sri Lanka. Having examined closely developments in Sri Lanka since the AIT determination in LP, the Court considered that there was no general risk of mistreatment to Tamils in Sri Lanka and that nothing in the objective information submitted to the Court would require a different conclusion than that reached in the case of LP. The Court did not consider it necessary to identify any additional risk factors than those identified in LP though it agreed with the AIT that the list was not exhaustive. The Court emphasised that any individual asylum decision should be based on a fair assessment of the cumulative weight of the risk factors identified in LP, the general situation in Sri Lanka and the individual circumstances of the case. In particular the Court found that:

- there was a greater risk of detention and interrogation at Colombo airport than in Colombo city since the authorities at the airport would have greater control over the passage of persons there than the population at large;



- the majority of risk factors in LP would be more likely to bring a returnee to the attention of the Sri Lankan authorities at the airport than Colombo city
- the assessment of whether somebody is at real risk on return may depend on the likelihood of their being detained and interrogated at Colombo airport;
- the Sri Lankan authorities have the technological means and procedures in place to identify failed asylum seekers at the airport and those who are wanted by the authorities, however, the rigour of checks will vary from time to time depending on the security concerns of the authorities; and,
- in respect of risk of ill treatment of Tamils from the LTTE in a government controlled area such as Colombo, consistent with the determination in AIT determination of PS, only Tamils with a high profile as opposition activists or those seen by the LTTE as renegades or traitors may be able to demonstrate a real of mistreatment.

**3.7.24 Conclusion.** The emergency regulations imposed in August 2005 continue to be in place allowing for the arrest of individuals by members of the armed forces and detention for up to eighteen months without trial. Young Tamil men who are suspected of being LTTE members or supporters appear to be the primary target of arrests and a large number of civilians are still held in detention camps in the north while the authorities screen them to identify whether they have been involved with LTTE activities. However, notwithstanding those held in military camps in the north, most individuals detained are reportedly released quickly and it can therefore still be said that generally the authorities in Sri Lanka are not concerned with those individuals with past low-level support for the LTTE.

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

**3.7.26** There cannot be said to be a general sufficiency of protection available to those applicants who express fear of state officials after having made complaints to the Sri Lankan authorities with regard to, for example, the use of torture. However, where it is not considered unduly harsh for the victim to do so, internal relocation may be an option. The grant of asylum or Humanitarian Protection is unlikely therefore to be appropriate where there is an option of internal relocation.

### **3.8. General country situation**

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

**3.8.2 Treatment.** The 26 year ethnic conflict in Sri Lanka between the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan government, concluded on 18 May 2009 when the Sri Lankan authorities declared victory over the LTTE. Fighting had intensified between both sides from 2007 when the government made significant gains against the LTTE on the ground in the eastern regions taking control of Batticaloa and Thoppigala on 11 July 2007, signifying the end of LTTE influence in the area. In January 2008, a ceasefire agreement (CFA) between the LTTE and the government was formally annulled by the government. Military operations in the northern districts under the control of the LTTE stepped up a pace at the end of 2008 when the government gained control of Kilinochchi (the LTTE's

administrative headquarter since 1998), the Jaffna A9 highway and Mullativu town. The final military act was played out in just 300 square metres of territory along the western boundary of the Mullativu lagoon.<sup>64</sup> Most, if not all, of the LTTE's leadership, including its commander in chief, Vellupillai Prabhakaran, were killed.<sup>65</sup>

- 3.8.3** According to the USSD, there were credible reports of politically motivated and arbitrary and unlawful killings by government agents during 2008. Other reports of human rights abuses by the USSD pointed to disappearances, arbitrary arrests and detention, poor prison conditions, denial of fair public trial, government corruption and lack of transparency, infringement of freedom of movement and discrimination against minorities. However, during 2008, no military, police or paramilitary members were convicted of any domestic human rights abuses. For its part, the LTTE was reported to have engaged in torture, arbitrary arrest and detention, denied fair public trials and denied freedoms of speech, press and assembly. The LTTE was also reported to be active in the South of Sri Lanka attacking military and civilian targets.<sup>66</sup>
- 3.8.4** The South Asia Terrorism Portal reported that the number of killings in Sri Lanka in the last three years (including deaths of civilians, security forces and members of the LTTE) was: 4,126 in 2006; 4,377 in 2007; 11,144 in 2008 and between 1 January 2009 and 15 June 2009, 15549.<sup>67</sup> An estimated 75-80000 people are estimated over the course of the 26 year conflict.<sup>68</sup>
- 3.8.5** The UN has reported that between 27 October 2008 and 8 June 2009, 280,812 people crossed to Government controlled areas from the [former] conflict zone. They are reportedly hosted in camps in the districts of Jaffna, Vavuniya, Mannar and Trincomalee.<sup>69</sup> The humanitarian situation in the north is serious however, food and medicine is getting into the area. The UN humanitarian wing reported on 8 June 2009 that basic food supplies were distributed to around 280000 people in the north east following the end of the conflict. UNHCR and other aid agencies had provided emergency shelter including 6500 emergency structures and over 13000 tents with more erected as land was cleared. Water and sanitation had been a huge challenge but progress was being made with water being provided for over 75% of overall drinking and bathing needs. And as at 8 June, the UN World Food Programme had delivered nearly 880 metric tonnes of food to IDPs in Vavuniya.<sup>70</sup>
- 3.8.6** According to UNHCR, individuals who have fled the [former] conflict areas in the North have faced serious restrictions on their ability to move to other parts of the country and many, including family groups, have been forced to remain in camps and transit sites established by the Government in Mannar, Vavuniya and Jaffna districts. Human rights observers have expressed concern that the conditions in the camps are not consistent with international standards for the treatment of displaced persons, in particular the restrictions on freedom of movement, the presence of military personnel in the camps and the screening process to identify LTTE suspects, which has reportedly been associated with arrests and disappearances.<sup>71</sup>
- 3.8.7** *Sufficiency of protection.* As this category of applicants' fear is of mistreatment on the basis of the general country situation and not particular state or non-state agents, the availability of sufficient state protection is not relevant.

<sup>64</sup> COIS Sri Lanka Country Report June 2009

<sup>65</sup> House of Commons Paper – War and Peace in Sri Lanka

<sup>66</sup> USSD 2008 – released in February 2009

<sup>67</sup> Asia Terrorism Portal (SATP): 'Fatalities District Wise 2007', 'Fatalities District Wise 2006', 'Fatalities District Wise 2005' & 'Prominent Tamil political leaders assassinated since the Ceasefire Agreement'

<sup>68</sup> House of Commons Paper – War and Peace in Sri Lanka

<sup>69</sup> UN News Service – 8 June 2009

<sup>70</sup> UN News Service – 12 June 2009

<sup>71</sup> UNHCR Eligibility Guideline Sri Lanka – April 2009

**3.8.8 Internal relocation.** General information on freedom of movement is at paragraphs 3.7.15-3.7.18. The conflict between the Sri Lankan authorities and the LTTE has now concluded. Whilst freedom of movement for individuals held in camps in the north has been restricted, this should not preclude consideration of the internal relocation option. It is clear that some individuals have been able to relocate outside of areas in the north of the country to the South and there is generally freedom of movement within Sri Lanka. However, each case should be considered on its individual merits.

### **3.8.9 Caselaw.**

**PS [2004] CG 00297** The Tribunal:

- restated that Tamils from the north and east of Sri Lanka, under the direct control of the LTTE, and from those areas where the degree of control has fluctuated, can in general terms safely relocate to Colombo to avoid localised fear of the LTTE. Travel restrictions have been greatly and progressively eased since the ceasefire, with a reduction in the numbers of checkpoints.
- accepted that it is physically possible for LTTE members to travel to Colombo although, in times when they have provoked public concern by their actions there, they would face heightened security measures, albeit not on the scale of the former cordon and search operations regularly carried out prior to the ceasefire. Nevertheless, it is clear that they do not choose to do so on an indiscriminate basis in order to find all those against whom they may harbour some suspicion.
- concluded that 'As we have already observed, those who the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition activists, or those whom they would see are renegades or traitors to the LTTE' (p71) and for those who are not high profile 'there is no arguable basis for saying that the Sri Lankan state does not provide a sufficiency of protection to the generality of Tamils having a localised fear of the LTTE in their home area.' (p72).

**CG [2007] UKIAT 00076 LP.** The Tribunal found that (1) Tamils are not per se at risk of serious harm from the Sri Lankan authorities in Colombo. A number of factors might increase the risk, including but not limited to: a previous record as a suspected or actual LTTE member; a previous criminal record and/ or outstanding arrest warrant; bail jumping and/ or escaping from custody; having signed a confession or a similar document; having been asked by the security forces to become an informer; the presence of scarring; return from London or other centre of LTTE fundraising; illegal departure from Sri Lanka; lack of an ID card or other documentation; having made an asylum claim abroad; having relatives in the LTTE. The Tribunal found that in every case, those factors and the weight to be ascribed to them, individually and cumulatively, must be considered in the light of the facts of each case but they are not intended to be a checklist. (2) If a person is actively wanted by the police and/or named on a Watched or Wanted list held at Colombo airport they may be at risk of detention at the airport. (3) Otherwise, the majority of returning failed asylum seekers are processed relatively quickly and with no difficulty beyond some possible harassment. (4) Tamils in Colombo are at increased risk of being stopped at checkpoints, in a cordon and search operation, or of being the subject of a raid on a lodge where they are staying. In general, the risk again is no more than harassment and should not cause any lasting difficulty, but Tamils who have recently returned to Sri Lanka and have not yet renewed their Sri Lankan identity documents will be subject to more investigation and the factors listed above may then come into play. (5) Returning Tamils should be able to establish the fact of their recent return during the short period necessary for new identity documents to be procured. (6) A person who cannot establish that he is at real risk of persecution in his home area is not a refugee; but his appeal may succeed under Article 3 of the ECHR, or he may be entitled to humanitarian protection if he can establish he would be at risk in the part of the country to which he will be returned. (7) The weight to be given to expert evidence (individual or country) and country background evidence is dependent upon the quality of the raw data from which it is drawn and the quality of the filtering process to which that data has been subjected. Sources should be given whenever possible. (8) The determinations about Sri Lanka listed in paragraph 226 are replaced as country guidance by this determination. They continue to be reported cases.

**AN & SS (Tamils-Colombo-risk?) Sri Lanka CG [2008] UKAIT 00063.**

**Risk in Colombo from the LTTE**

The AIT found that since the breakdown of the ceasefire, heightened security in Colombo has restricted the operations of the LTTE who are focusing on high profile targets. Background evidence does not show that Tamils in Colombo who have stopped supporting the Tigers, or who support parties opposed to them, are at real risk of reprisals, absent some features bringing them to prominence and the conclusion to this effect in PS Sri Lanka CG [2004] is updated and superseded by this determination. And:

- Since the breakdown of the ceasefire the operating capacity of the LTTE has been restricted and they are concentrating their attacks on individuals with a high political or military profile as well as members of the security forces generally and upon military installations.
- There is scarcely any evidence that low level supporters/ opponents of the LTTE who have left their ranks have been targeted in Colombo since 2004
- There is no solid evidence that the LTTE maintain a computerised database of opponents and defectors against which a check may be run when a person comes to their notice.
- For a person at risk in their home area in the North or the East but who is not risk in Colombo, relocation to Colombo will not in general be unduly harsh. Young Tamil men are likely to be stopped at checkpoints or rounded up in cordon and search operations or in raids upon lodges but most detainees are released in a fairly short time and those arriving without a national ID card should be able to get a replacement without too much difficulty. Abductions and kidnappings have tended to focus on businessmen and those about to leave the country although there is recent evidence that LTTE supporters are being abducted by paramilitaries

#### **Risk in Colombo from the Security Forces**

The AIT said that the country guidance in LP [2007] remains valid and endorsed the suggestion made by Collins J that the 12 risk factors listed in LP could usefully be divided into background factors. These background factors in themselves do not present a real risk to failed asylum seekers in Colombo but may exacerbate the situation when they combine with the 12 risk factors identified in LP. The AIT also found that:

- The National Intelligence Bureau in Sri Lanka maintains a computerized database of persons who pose a threat, while immigration officers at Bandaranaike International Airport use a computer system which can flag up whether a newly arrived passenger is on the wanted or stop list. However there is no firm evidence that everyone who has ever been detained by the police or army is likely to be on the database.
- Failed asylum seekers in Colombo who arrive without a National Identity Card are usually able to obtain one on production of a birth certificate which is also usually easy to obtain
- Roadside checkpoints and raids upon lodges do not in general create a real risk of persecution or serious ill treatment. Most of those held are released within a reasonably short period of time and the Supreme Court has intervened to curb the excesses of the security forces.
- Abductions and kidnappings have been carried out by a wide variety of groups, mostly pro government militias and criminal gangs but the scale of these disappearances does not affect failed asylum seekers arriving in Colombo. Abductions and killings have tended to focus on businessmen and those about to leave the country, although there is recent evidence of LTTE supporters being abducted by pro government paramilitaries.
- For person at risk in their home area but who is not at risk in Colombo, relocation to the capital will in general not be unduly harsh

**NA v United Kingdom ECHR (2008) – risk on return to Sri Lanka for Tamils.** The Court endorsed existing country guidance (LP and PS) on risk to Tamils in Sri Lanka. Having examined closely developments in Sri Lanka since the AIT determination in LP, the Court considered that there was no general risk of mistreatment to Tamils in Sri Lanka and that nothing in the objective information submitted to the Court would require a different conclusion than that reached in the case of LP. The Court did not consider it necessary to identify any additional risk factors than those identified in LP though it agreed with the AIT that the list was not exhaustive. The Court emphasised that any individual asylum decision should be based on a fair assessment of the cumulative weight of the risk

factors identified in LP, the general situation in Sri Lanka and the individual circumstances of the case. In particular the Court found that:

- there was a greater risk of detention and interrogation at Colombo airport than in Colombo city since the authorities at the airport would have greater control over the passage of persons there than the population at large;
- the majority of risk factors in LP would be more likely to bring a returnee to the attention of the Sri Lankan authorities at the airport than Colombo city
- the assessment of whether somebody is at real risk on return may depend on the likelihood of their being detained and interrogated at Colombo airport;
- the Sri Lankan authorities have the technological means and procedures in place to identify failed asylum seekers at the airport and those who are wanted by the authorities, however, the rigour of checks will vary from time to time depending on the security concerns of the authorities; and,
- in respect of risk of ill treatment of Tamils from the LTTE in a government controlled area such as Colombo, consistent with the determination in AIT determination of PS, only Tamils with a high profile as opposition activists or those seen by the LTTE as renegades or traitors may be able to demonstrate a real (fear/risk) of mistreatment.

**ECJ Elgafaji 17 February 2009.** The ECJ in this case found that Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, in conjunction with Article 2(e) thereof must be interpreted as meaning that:

- the existence of serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian returned to the relevant country or as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.

**3.8.10 Conclusion.** A state of civil instability and/or where law and order has sometimes broken down, as has happened in Sri Lanka, does not of itself give rise to a well-founded fear of persecution for a Convention reason. An applicant can only demonstrate a well-founded claim where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs during such instability/insecurity.

**3.8.11** Where those seeking protection in the United Kingdom fall outside the scope of the Refugee Convention, they may seek humanitarian protection under immigration rule 339C which implemented the provisions with respect to subsidiary protection in articles 2(e) and 15(c) of the EU Qualification Directive.

**3.8.12** On 17 February 2009 the European Court of Justice (ECJ) issued a judgment in the case of *Elgafaji v NL* (Case C-465/07) concerning Article 15(c) which clarifies the test for whether Article 15c applies in particular cases. The ECJ found that Article 15c of the Qualification Directive provides protection that is supplementary to that provided by Article 3 of ECHR if in a country or part of a country that is in a state of internal or international armed conflict, indiscriminate violence: *“reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence in the territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) of the Directive”*.

**3.8.13** The European Court of Justice emphasised that, in order for someone to qualify for protection on the basis of indiscriminate violence, the level of violence would need to be so high that **anyone**, irrespective of his or her personal circumstances, returned to the country or part of a country in question, would be at risk “solely on account of his presence in the

territory of that country or region". The ECJ recognised that such a high level of indiscriminate violence will be 'exceptional'. The judgement whether levels of indiscriminate violence in a particular country or part of a country reach such a high level is one for the authorities and the courts of members states.

**3.8.14** A general risk of violence following the end of the military conflict between the Government and the LTTE will not in itself be sufficient to warrant a grant of asylum or bring applicants within the Humanitarian Protection or Discretionary Leave provisions. Incidences of violence in Sri Lanka following the conclusion of the conflict do not reach the high threshold identified in Elgafaji. Furthermore, conditions within Sri Lanka are not sufficiently poor that they would amount to a breach of the ECHR. Whilst the humanitarian situation in the north is serious, assistance is getting into the northern regions and is continuing to be provided to the former conflict region in the east.

### **3.9 Prison conditions**

**3.9.1** 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.

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

**3.9.3 *Consideration.*** It was reported that prison conditions in Sri Lanka did not meet international standards in 2008 due to acute overcrowding and a lack of sanitary facilities. Prisons designed for 8,200 inmates held as many as 28000 prisoners. In some cases, juveniles were not held separately from adults and pre-trial detainees were not held separately from those convicted. Female prisoners were however held separately from male prisoners and in generally better conditions. According to the UN Special Rapporteur, the combination of severe overcrowding and an antiquated infrastructure of certain prison facilities placed unbearable strain on services and resources which for detainees in certain prisons, for example, the Colombo remand prison amounted to degrading treatment.<sup>72</sup>

**3.9.4** Whilst there is no independent institution for monitoring conditions, the Government permitted visits by independent human rights observers, including the International Committee of the Red Cross (ICRC). People arrested in connection with the armed conflict, including those, held in police stations, security detainees in Boosa detention camp and former LTTE fighters who had surrendered to the security forces, received ICRC visits, carried out in accordance with its standard working procedures. The ICRC recorded that 24,433 detainees were visited in 2008, of whom 3,340 monitored individually and 2,480 were newly registered, during 992 visits to 165 places of detention.<sup>73</sup>

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

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<sup>72</sup> USSD 2008 - released February 2009

<sup>73</sup> COIS Sri Lanka country report – June 2009

## **4 Discretionary Leave**

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See the Asylum Instructions on Discretionary Leave). Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Sri Lanka the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** The policy on minors claiming in their own right is set out in the Asylum Instructions on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Sri Lanka.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, and who do not qualify for leave on any more favourable grounds, should be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.
- 4.4 Medical treatment**
- 4.4.1** Applicants may claim they cannot return to Sri Lanka due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 to be engaged.
- 4.4.2** In Sri Lanka, the traditional Western medical structure of general practitioners, specialists and hospitals with operating theatres and emergency units, co-exists with the traditional practice of ayurvedic (herbal) medicine. The government health sector takes care of healthcare needs of the vast majority of the population, the private sector being quite small in terms of service provision and mostly available in urban areas. Almost 60% of Sri Lanka's population relies on the public health care system, with some 95% of inpatient health care being provided by the public sector.<sup>74</sup>
- 4.4.3** By agreement with Sri Lanka's health ministry, the International Committee of the Red Cross (ICRC) provides hospitals in Anuradhapura, Batticaloa, Jaffna, Kilinochchi, Mannar, Mullaitivu and Vavuniya districts with medical equipment and supplies for the treatment of sick and war-wounded people. Jaffna residents cannot obtain certain health-care services on the peninsula
- 4.4.4** Most conventional medicines are available in Sri Lanka. Government hospitals provide drugs free of charge, unless prescribed outside. The prices for medications bought in Sri Lanka range widely, but as a comparison, most drugs would be cheaper than in the United Kingdom for prescription and dispensing charges. On the whole, medical care is affordable

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<sup>74</sup> COIS Sri Lanka Country Report June 2009 (Human Rights: Medical Issues)



for the average person, and government hospitals generally charge a lesser fee than private hospitals.<sup>75</sup>

#### 4.4.5 Caselaw

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

**AN & SS (Tamils-Colombo-risk?) Sri Lanka CG [2008] UKAIT 00063.** For failed asylum seekers returned to Sri Lanka, psychotropic medication is freely available in Colombo, which also has the bulk of psychiatric facilities available in Sri Lanka. Most of the practitioners being Sinhalese, there may be linguistic and cultural barriers for Tamils with serious psychiatric disorders. But mental health problems are widespread in Sri Lanka.

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

## 5 Returns

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

**5.2** In its position paper dated 22 December 2006, UNHCR stated that Tamils from the North or East of Sri Lanka should not be returned to Sri Lanka until the security situation within the country improves. However, asylum and human rights claims are not decided on the basis of a general approach but rather the circumstances of the particular individual and the specific risk to that individual. It is important that case owners give individual consideration to whether the applicant has a well-founded fear of persecution for a convention reason or are otherwise vulnerable that they may engage our obligations under the ECHR. Any decision should also take into account the relevant country guidance set out in **LP 2007** and **NA 2008** (see above). If an individual's application falls to be refused, and any appeal is unsuccessful, then they would be expected to leave the UK voluntarily. If they do not, consideration should be given as to whether return should be enforced.

**5.3** Assistance is provided for those that wish to return voluntarily and permanently through the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the Border and Immigration Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance 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 the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

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