

ASYLUM AND IMMIGRATION TRIBUNAL

Heard at : Field House
On : 11th – 13th February 2008

Before :

Senior Immigration Judge Gleeson
Senior Immigration Judge McKee
Mr A.P. Richardson, JP

Between :

AN & SS

Appellants

and

Secretary of State for the Home Department

Respondent

Representation :

For the appellants : Mr Alasdair Mackenzie, instructed by Birnberg Peirce & Partners, for 'AN' ; Mr Peter Morris, likewise instructed by Birnberg Peirce & Partners, for 'SS'

For the respondent : Miss Jenni Richards, instructed by the Treasury Solicitor

Since the breakdown of the ceasefire, heightened security in the capital has restricted the operations there of the LTTE, who are focusing on 'high-profile' targets. The 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 feature bringing them to prominence. The conclusion to that effect in PS (LTTE – internal flight – sufficiency of protection) Sri Lanka CG [2004] UKIAT 297, which this determination updates and supersedes, is thus affirmed.

There is no good evidence that the LTTE maintain a computerized database of their opponents, such that new arrivals in Colombo can be checked against it. Checks are, on the other hand, run on a computerized database by immigration officers when passengers arrive at Bandaranaike International Airport, or by members of the security forces when people are detained, but there is no good evidence to show that everyone who has in the past been detained and questioned about possible involvement with the LTTE is on that database. On the contrary, it is likely to contain the names only of those who are of serious interest to the authorities.

The twelve ‘risk factors’ listed in LP (LTTE area – Tamils – Colombo – risk?) Sri Lanka CG [2007] UKAIT 76 can usefully be divided into risk factors per se, one or more of which are likely to make a person of adverse interest to the authorities, and ‘background factors’, which neither singly nor in combination are likely to create a real risk, but which in conjunction with risk factors per se will intensify the risk.

A failed asylum seeker who hails from the north or east of Sri Lanka and who has no relatives or friends to turn to in Colombo will generally be able to relocate there in safety and without undue harshness. Those arriving without their National Identity Card should be able to get a replacement without too much difficulty, while the great majority of those detained at checkpoints and in cordon-and-search operations are released within a short time. A generous support package is available for five years from the International Organisation for Migration to those who return voluntarily. Those who refuse to do so cannot pray in aid the prospect of being destitute in Colombo.

PR (medical facilities) Sri Lanka CG [2002] UKIAT 4269 is, owing to its antiquity, no longer to be treated as country guidance on the availability of medical treatment for returnees. The guidance in PS and LP, however, has been considered and approved by the European Court of Human Rights in NA v United Kingdom, handed down on 17th July 2008.

DETERMINATION

1. This is the reconsideration of two appeals by Sri Lankan asylum seekers of Tamil ethnicity, which have been linked before us because they raise the issue of whether returning asylum seekers are at risk in Colombo from the Liberation Tigers of Tamil Eelam (‘LTTE’), either because of past opposition (or perceived opposition) to them, or because of desertion (or perceived desertion) from their ranks. They also raise the issue, albeit to a lesser extent, of whether returned Tamil asylum seekers are at risk in Colombo from the authorities there. The two appellants in this case are both said to have worked for the LTTE and then gone over to the other side. The appellants’ names have been anonymized in the usual way, and neither of them gave evidence before us, the reconsideration being conducted by way of oral evidence from two expert witnesses, and oral and written submissions from the three representatives. The appeal of AN is against the respondent’s decision on 25th June 2005 to remove her as an illegal entrant, and was dismissed by an immigration judge, Mrs I. Montgomery, after a hearing at Hatton Cross on 18th August 2005. The appeal of SS is against the refusal on 8th February 2005 of leave to enter the United Kingdom, and was dismissed by an immigration judge, Mr David Ross, in a determination signed on 20th June 2005. It will be convenient to set out first a brief history of each claim.

AN’s claim

2. Miss AN hails from the Jaffna region in the north of Sri Lanka. Her story is that in 1995 she worked for a few months as a librarian with the Tamil Rehabilitation Organisation (‘TRO’), an outfit which did relief work for Tamils but was a ‘front’ for the LTTE. The library closed, but some three years after she stopped working for the

TRO, Miss AN was detained by the security forces and for three weeks endured brutal interrogation, torture and indeed rape in order to make her give information about the LTTE. In August 1998 she was released through the intervention of the EPDP, a pro-government Tamil organisation which had been asked to intercede by AN's father. They now prevailed upon AN to work for them, and she was indeed employed by the EPDP as a development officer from 1998 until December 2004, when the LTTE approached her parents and demanded that AN report to them.

3. AN had in the meantime been living in Jaffna with another EPDP worker, whom we may call 'K'. He was on an assignment in Batticaloa when, for her own safety, AN was advised by the EPDP to move to their camp at Vavuniya, and it was there that she heard, in January 2005, that her paramour had been killed by the Tigers in Batticaloa. AN suffered a miscarriage, and then in May 2005 the EPDP camp at Vavuniya was itself attacked by the LTTE, and the appellant was advised to seek safety abroad. The EPDP offered to arrange this, if AN could come up with the money. This was in due course provided by an uncle in Canada, and an agent took AN from the EPDP camp at Mankulam (whither she had now moved) to Bandaranaike International Airport. A false passport had been prepared for her, and the agent accompanied the appellant to this country, where she passed through immigration control and claimed asylum some three days later, on 13th June 2005.

4. Immigration Judge Montgomery found AN's story wholly credible, and this finding has not been challenged by the respondent. What caused reconsideration to be ordered was the inconsistency between the judge's conclusion that the appellant would not be of interest to the Tamil Tigers so long after going over to the EPDP in 1998, and AN's own evidence, accepted by the judge, that in May 2005 her father was questioned as to her whereabouts, and that her family in Jaffna were being kept under surveillance by the LTTE. The question for us is whether – it being accepted that she has a well-founded fear of persecution by non-state actors in her home area – the appellant will be at risk from the Tigers, and indeed from the security forces, in Colombo, and whether she can reasonably be expected to relocate there.

SS's claim

5. Mr SS hails from the Batticaloa region in the east of Sri Lanka. His story is that in 1988 he was detained for three days by the Sri Lankan Army and tortured. He was not a member of the LTTE at that time, but he did join them in 1990, and until 1998 was engaged in armed combat with government forces, taking part in many battles. In 1998 the appellant got married, and thereafter his role changed to that of driver for an assassination squad. The squad successfully eliminated one local MP (although they failed in their attempt upon another) as well as a prominent businessman who had links with the army, and several other people who belonged to organisations opposed to the Tigers. When the ceasefire was called in 2002 the appellant's driving duties became more mundane, but things 'hotted up' for him in March 2004, when the commander of the LTTE in the eastern part of the island, Colonel Karuna, rebelled against the LTTE leadership. SS, who had been decorated by Colonel Karuna and stayed loyal to him, was forced to flee when the northern LTTE launched an attack, and was persuaded to give himself up the following month. Between April and December 2004 he was detained and tortured by the LTTE to make him disclose information about the Karuna group, and he was only able to escape after the *tsunami* struck. He sought asylum here when he arrived on 28th January 2005.

6. Immigration Judge Ross accepted that the appellant had been an active combatant in the LTTE and had taken part in the assassination of their opponents, but did not accept the authenticity of letters which had purportedly been sent to SS's mother and wife in January 2005, demanding that he report to the LTTE, or of a 'wanted' poster purportedly issued by the LTTE. What caused a review of his determination to be ordered was the judge's failure to say whether he believed SS to have been imprisoned by the LTTE and to have subsequently escaped. All he said was that, whilst SS might well be associated with the Karuna faction, he was not a high-level associate of the Colonel, and so would not be a likely target of the LTTE if he were to settle in a government-controlled area.

7. The risk to SS in Colombo was, of course, to be part of our reconsideration, but after the first day's hearing Miss Richards told us that the respondent was no longer contending that SS could live safely in Colombo. Within a few months of coming to this country he had been diagnosed with a serious mental illness, and the latest medical report (from Dr Catherine King, MRCPsych) revealed such an acute degree of psychosis that his behaviour on return was likely to get him into serious difficulties. It was accepted therefore that he was at real risk of ill-treatment on return, crossing the threshold of Article 3. It is, however, the respondent's contention that SS is excluded from the Refugee Convention (and by analogy from humanitarian protection) by virtue of Article 1F(a) and (c), in that his participation in the murder of civilians amounts to war crimes and crimes against humanity, making him guilty of acts contrary to the purposes and principles of the United Nations.

AN's current circumstances

8. As was to be expected, we had before us a very large quantity of documentary material on the general situation in Sri Lanka as well as on the two appellants themselves. We shall look first at the medical and other documents relating to Miss AN's current circumstances. A psychiatric report was initially prepared for her on 3rd August 2005 by Dr Kanagaratnam, a consultant psychiatrist who originally qualified as a doctor at the University of Ceylon in Colombo, and whose report stresses the shortcomings of psychiatric treatment in Sri Lanka compared to here. After a three-hour consultation on 16th July 2005, Dr Kanagaratnam diagnosed post-traumatic stress disorder and depressive illness, recommending both psychotherapy and antidepressant medication. Return to Sri Lanka would, he predicted, exacerbate both her PTSD and her depression, giving rise to a risk of suicide.

9. The appellant did not, however, make any mention to Dr Kanagaratnam of the friendship which she had formed with a Sri Lankan man whom she met very soon after being released from her initial fortnight's detention at Oakington in June 2005, and by whom she became pregnant shortly thereafter. In March 2006 she gave birth to a son, and on 19th January 2008 she told a consultant psychiatrist, Dr Charlotte Harrison, that she was now living in a rented room, and would see the father of her child every two weeks. He was, she said, more loving towards her than she was towards him, although she also described him as "*an inspiration*" and even as her reason for living. Dr Harrison records without comment Miss AN's estimate that it took her about six months after meeting this man before she could bring herself to have sexual relations with him, but that does not seem to accord with the amount of time available before giving birth.

10. In her report, prepared after an interview lasting one and a half hours, Dr Harrison goes on to say that Miss AN received weekly counselling for four or five months during 2007, although this had now temporarily stopped. She was getting telephone calls about once a month from neighbours of her family, rather than directly from her parents and siblings. The latter were still living in their home village but were unwilling to contact her directly, lest they get into trouble with the LTTE or the Army. They did, however, pass on news to the appellant through the neighbours. In Dr Harrison's opinion, the depressive illness diagnosed by Dr Kanagaratnam had improved "*due to the biological and psychological treatment she has received as well following the development of her current relationship and the birth of her child.*" But although AN did not exhibit "*a current major depressive episode*", and was not "*at significant risk of completing suicide due to her appropriate feelings of responsibility towards her son*", she was still suffering from PTSD, and Dr Harrison considered that return to Sri Lanka would exacerbate this condition as well as leading to a recurrence of her depressive disorder "*due to her fixed beliefs that return would inevitably lead to further torture or death.*" In the psychiatrist's opinion, the deterioration in her mental health would also lead to her "*being unable to explain herself to the Sri Lankan authorities if she were questioned by them.*"

Dr Smith's report

11. The mass of documentary material going to general country conditions in Sri Lanka is listed in the Appendix to this determination. We shall refer to individual items at the points where they are mentioned in the representatives' submissions. First, however, we shall set out the gist of the reports and oral evidence of the two experts, upon which the appellants principally rely. The report by Dr Chris Smith, a research associate at Chatham House and formerly the Deputy Director of the International Policy Institute at King's College, London, is dated 30th January 2008 and runs to some 49 pages. Perhaps the most important point made by Dr Smith is that, according to confidential information given to him by a former officer in the Sri Lankan intelligence service, "*[t]he LTTE is known to have its own electronic database.*" He is not referring just to the finding of J. Goodhand and his associates (in a report mimeographed by SOAS in August 2005) that the LTTE maintains computer databases of potential contributors to the organisation's funds, both in the homeland and in the Tamil diaspora overseas. Rather, he thinks that anyone of adverse interest to the LTTE – which includes the appellant, as shown by the Tigers' insistence that she report to them – is likely to be included in the database. Being on the database because of her past involvement with the EPDP, Miss AN is likely, in Dr Smith's opinion, to come to the adverse attention of the LTTE in Colombo.

12. Dr Smith acknowledges that there has been a significant decline in the LTTE's operations and activities in Colombo since the end of the ceasefire and the consequent tightening of security, but he describes the LTTE as "*a far from emasculated force in Colombo.*" Although there is "*little current evidence of LTTE operations against the EPDP in Colombo*", Dr Smith thinks that such operations may be taking place but are simply getting reported as 'Tamil-on-Tamil' violence. Besides, the EPDP members are comparatively few in number, and of them many have sought safety outside Sri Lanka, while in Colombo itself they have protection in army camps, police stations and the highly-fortified EPDP headquarters.

13. Apart from the LTTE getting to know that a former employee of the EPDP is in Colombo, would the appellant be at risk from the Sri Lankan authorities there? Dr Smith thinks she would be. Having been detained by the authorities in 1998, she would be of adverse interest to them now, particularly returning from London, one of the centres of LTTE fundraising. How would they know about her detention in 1998? They would find out by checking her details against their “*central database*”, which holds information about “*all those who have been detained and have left detention as unacquitted suspects*”, and the police would run this check because, having no valid reason for being in Colombo and having no ID card, Miss AN would naturally arouse their suspicion. So important is it to have an ID card that the UNHCR is issuing “*unofficial, makeshift*” ID cards to help people who do not have official ones. Miss AN would not be able to pass through the many check-points in Colombo without a valid ID card, and in order to get one, she would have to go back to Jaffna. But Miss AN would face a more immediate crisis as soon as she arrived in Colombo. Without an ID card she would be unable to obtain legal employment, and might be reduced to begging or prostitution.

14. There would be difficulty too in finding accommodation. The ‘lodges’ in which Tamils stay if they have no relatives or friends to put them up have been regularly harassed by the authorities, and on 31st May 2007 a mass clear-out was ordered. Apart from being encouraged to go back to their native areas in the north and east of the island, many of the guests in the lodges have ended up in detention at the infamous Boosa Camp near Galle. Dr Smith also draws attention to the difficulties which the appellant would face as a single woman, indeed an unmarried mother, on top of the stigma of mental illness, although in terms of treating that illness he notes that pharmaceuticals are subsidized by the government and are in any event relatively cheap, being imported from India.

15. As examples of the risk facing Miss AN, Dr Smith cites the fate of two failed asylum seekers expelled from Britain, one of whom committed suicide at Colombo airport on 10th September 2006, while the other was allegedly killed by agents of the state on 20th August 2006. The Immigration Minister, Liam Byrne, had been forced to answer a Parliamentary Question on this. The International Organisation for Migration (‘IOM’) had told the Hotham Mission (sent from Australia on a field trip to Sri Lanka) that returnees not assisted by the IOM as participants in the Voluntary Assisted Return Programme (‘VARP’) had been arrested and harassed on or soon after their arrival, particularly when they no longer held a National Identity Card. Taking account also of the scarring on her arms and legs, Dr Smith was sure that AN too would be detained immediately or soon after her arrival, and would be vulnerable to abuse and torture.

Dr Smith’s oral evidence

16. At the hearing before us on 11th February 2008, Dr Smith adopted his report and was questioned in-chief about his prediction that AN’s record of detention in 1998 as an LTTE suspect would be on a database consulted by the Sri Lankan authorities. That there was such a database seemed to be contradicted by a letter from the British High Commission in Colombo dated 25th January 2008, conveying information accrued by our Airline Liaison Officer (‘ALO’), who spends several days a week at Bandaranaike International Airport and works closely with the CID there. The ALO had never seen any CID officers use a computer, indeed no computers were installed

at the CID's airport offices. This information tallied with what the High Commission's Risk Assessment Officer had seen when he visited the CID Headquarters in Colombo. Typewriters were on the desks, but no computers.

17. In response to this, Dr Smith said that arrivals at Bandaranaike International Airport are now entirely computerized, and he had heard that a 'wanted' list was attached to the computer, which enables immigration officers to alert the CID to passengers who are on that list. As for the CID having no computers themselves, Dr Smith was sure that, when he interviewed a CID operative called Prasad Fernando a couple of years ago, there was a computer in his office – but he could not swear to it.

18. Another passage in the BHC letter was now cited, in which the issuance of a National Identity Card is said to be based mainly on the production of a birth certificate, while forged or improperly issued birth certificates are said to be obtainable for as little as US \$5-\$20. Dr Smith did not agree that it would be easy for the appellant to get a replacement for the ID card which she had left behind. She might be able to get a replacement in Colombo if she produced her passport and a photocopy of her old ID card, or at least the relevant details from it. Otherwise, she would have to go back to Jaffna and get her village headman ('*grama seveka*') to certify that she was who she said she was. If she could not obtain an ID card, she would have serious problems. That was why the UNHCR were issuing unofficial ID cards. But having one of those would, in Dr Smith's view, simply draw attention to the fact that you did not have an official one, and invite questions as to why you did not have an official one.

19. Dr Smith was now asked whether, having been merely a 'development officer' for the EPDP, without a specifically military or political role, the appellant would really be of adverse interest to the LTTE in Colombo. Just working for the EPDP would be enough, in Dr Smith's view, given the antipathy shown by the LTTE to any Tamil groups who opposed them. Would the appellant's work for the EPDP not, on the other hand, reduce any adverse interest from the government side which her earlier work for the Tigers might have excited? Dr Smith did not think that the EPDP, a group numbering hundreds rather than thousands which was not well structured or organized, would have told the authorities that the appellant was working for them. Her name would therefore still be on the database of those detained as LTTE suspects.

20. Having completed his examination-in-chief, Mr Mackenzie now handed over to Miss Richards, who returned to the question of computers at the airport and whether the CID there had any. Was it not likely that the ALO, who was at the airport most days of the week, would know if the CID were using them? Dr Smith insisted that, according to interviews which he had had with the head of immigration and with a former chief inspector of police, a computerized database was available to the CID at the airport. As for what was on the database, this would be records of individuals suspected of LTTE involvement, going back ten or even fifteen years.

21. Miss Richards turned now to LTTE activity in Colombo in recent years, which she suggested had focused on high-profile targets. That, agreed Dr Smith, was the impression conveyed by the English-language press, but much lower-level Tamil-on-Tamil violence did not get reported, and the Tigers, although "deeper underground"

because of tight government security, still knew exactly what was going on. For example, a lodge-keeper in the Pettah district of Colombo had told Dr Smith that while he had to keep a guest list, which would be checked by the army, the Tigers had no need to consult the list to find out who was staying at the lodge. Their intelligence at street level was so good that they knew who was staying there.

22. Miss Richards was even less happy with the notion that Miss AN was on an LTTE database, than with the notion that the appellant was on a government database. Who was the “former intelligence officer” who had told Dr Smith about the LTTE database? Dr Smith would not reveal the source of this information, which was given to him in confidence, but observed how easy it was nowadays to build up an electronic database, how Jonathan Goodhand’s study had shown that there already was a database of LTTE *supporters* for fundraising purposes, and how it would make sense for the LTTE to build up a parallel database of *opponents*. Dr Smith conceded, however, that he had no empirical evidence that the latter database existed, save what he had been told by his anonymous informant.

23. Turning to Miss AN’s mental health problems, Miss Richards queried whether these would carry such a stigma nowadays, given the background evidence that, in the wake of the *tsunami*, very large numbers of Sri Lankans were suffering from post-traumatic stress disorder and depression. Dr Smith felt that mental illness was still something which Sri Lankan society was unwilling to come to terms with, but acknowledged that, of the limited facilities available for its treatment, the bulk were in Colombo. As for assistance with day-to-day living, Dr Smith thought that the NGOs which had come to the rescue after the *tsunami* were reaching the end of their funding cycle, but accepted that the IOM was providing very good support for voluntary returnees, and was at least assisting with onward travel those returned against their will to Colombo.

24. Miss Richards proceeded to criticize aspects of Dr Smith’s report concerning general conditions in Colombo, such as his highlighting the expulsion of large numbers of Tamils from the lodges after an LTTE attack in Colombo, but his failing to mention that the Supreme Court had ruled the expulsion unlawful and that the Prime Minister had apologized. Dr Smith explained that he was just trying to outline the process whereby Tamils in Colombo were being put under pressure. He was unwilling to believe government statistics that most of those detained after cordon-and-search operations were released. Many languished in Boosa Camp, where they were mistreated. Miss Richards picked up a further reference in Dr Smith’s report to two failed asylum seekers who died after being returned from the UK, one committing suicide at Colombo airport in September 2006, the other being shot by the security forces in August 2006. Dr Smith acknowledged that this was misleading. Both asylum seekers had in fact been returned from the United Kingdom several years before their deaths in 2006. This had come to Dr Smith’s attention when he gave evidence to the Tribunal in the ‘country guidance’ case of *LP* [2007] UKAIT 76, but he had forgotten to amend his report template in the light of it.

25. Dr Smith was now taken to the last paragraph of his report on AN, where he said that, London being a major location for LTTE fundraising, it would therefore be reasonable to conclude that Miss AN would be detained on arrival from that city. Asked for evidence that passengers arriving from London were likely to be detained,

Dr Smith could not point to any specific evidence, but averred that if he were a Sri Lankan immigration officer, he would certainly be suspicious.

26. Moving on finally to Dr Smith's report on SS, Miss Richards queried the assertion that "*all Karuna supporters are vulnerable to murder attempts, detention and torture*" at the hands of the LTTE. Was it not the case that, apart from one incident highlighted in Professor Good's report, there had been no instances of Karuna supporters being tracked down to Colombo since 2004? Dr Smith agreed that the level of Tamil-on-Tamil violence had decreased in Colombo, but thought that some of it might have been LTTE-Karuna violence, only not reported as such. Miss Richards also queried Dr Smith's opinion that, as well as being on the LTTE database as a defector to Karuna, Mr SS would be on the government database too, because of his detention by the army in 1988 and because the Karuna group would have passed to the authorities the information that SS had been detained by the LTTE in 2004 and might have given them information. Dr Smith could not pinpoint any evidence for this assumption, but based it upon years of observing the situation in Sri Lanka and absorbing things "by osmosis".

Professor Good's report

27. Dr Smith was not re-examined, and we heard next from Professor Good who, albeit his report had been prepared specifically for SS's case, kindly agreed to give oral evidence, although the Secretary of State had by then indicated that SS would be granted some kind of leave. First, however, we shall summarize the contents of that report.

28. Professor Anthony Good is Head of the School of Social and Political Studies at the University of Edinburgh, and has an international reputation as a social anthropologist. He paid fact-finding visits to Sri Lanka in 2003 and 2006, and keeps in regular contact with PhD students and other researchers whose field is Sri Lanka, as well as with organisations based on that island. His report, dated 28th January 2008, gives a history of the conflict between the Karuna faction and the 'official' LTTE in the east of the island, and emphasizes that, although most of the casualties have been inflicted outside Colombo, there have been examples in Colombo itself, such as the gunning down of a pro-LTTE MP and his bodyguard on 10th November 2006. Both sides, he says, "*have the organisational capacity to carry out killings of opponents or rivals.*" More recently, however, the Karuna faction has been split in two, with the larger group (the TMVP) being commanded by his rival, one Pillaiyan, and with Colonel Karuna himself now in British custody.

29. As for the risk posed by the LTTE to members of the Karuna faction in Colombo, Professor Good infers from a recent spate of incidents that the Tigers continue to have a considerable clandestine presence in Colombo. These incidents include double bomb blasts at a government office and a shopping mall on 28th November 2007, the killing of a UNP Member of Parliament on 1st January 2008, bomb attacks against military vehicles on 2nd and 8th January, and the assassination of a government minister, also on 8th January this year. High-profile supporters of Colonel Karuna have also been targeted, eight top aides of Colonel Karuna having been shot dead in Colombo in July 2004, and a politician known as PLOTE Mohan having been assassinated in Colombo that same month. But the targets of such attacks have not always, adds Prof. Good, been such high-profile persons. In March 2007 five bodies

were discovered in a swamp near Colombo and were said to belong to TMVP members who had been abducted by the Tigers after being sent to Colombo from the eastern part of the island for their own safety.

30. Apart from assassinations, Prof. Good notes the widespread abduction of Tamils in Colombo by various paramilitary groups acting as proxies for the security forces, often using white vans without number plates. Ransoms will often secure release, but many people have simply disappeared after being abducted. Some of the abductions are no doubt carried out by the Tigers, but in the majority of cases it is uncertain who is responsible. While senior members of the Karuna faction have been afforded protection in Colombo by the security forces, Prof. Good does not think that this would be extended to someone like Mr SS.

31. The report now turns to record-keeping, in particular whether the immigration authorities or the CID at the airport would have information on returnees. Professor Good refers to a Dutch report of 1999 that the National Intelligence Bureau ('NIB') had a computerized database of wanted persons, including both ordinary criminals and LTTE suspects. The police would consult this database after arresting somebody at the airport or in round-ups, and the person was likely to be on it if he had previously been arrested or informed upon. The CIPU Report for October 2005 added that computerized records were only available in the south of the country, but that details of arrests in the north were sent down and transferred to the computer. Professor Good thinks that, given the ongoing conflict, the authorities have every incentive to maintain official records on suspects who have been arrested, even if they have subsequently been released without charge. Indeed, according to a report in October 2006 by the Hotham Mission, the NIB *"keeps records on people dating back more than ten years and, since 2004, has been using a national computerized database."*

32. From this Professor Good infers that prior detentions are likely to be known to the authorities when failed asylum seekers are returned to Sri Lanka and, *"extrapolating slightly from the evidence"*, that there is a central database going back at least 10-15 years, which tallies with what Dr Smith was told by the retired Inspector-General of Police, Chandra Fernando. Even if the returnee passes successfully through the airport immigration procedures on arrival, Professor Good emphasizes the difficulties facing him in Colombo if he does not have a National Identity Card ('NIC'). According to the Hotham Mission's report, returnees not being assisted by the IOM have been arrested and harassed soon after arrival, particularly if they no longer hold an NIC. In order to get a replacement NIC, applicants must, according to a 2002 report by the Canadian IRB, present themselves to the 'Front Office' in Colombo with a copy of their police registration, a police report documenting the loss of the original card, and their birth certificate. If they do not have a birth certificate, they can apply for one through the Front Office. But if there is no record in the central registry archives, they must obtain a certificate from the *grama sevaka*, the headman of their native village.

33. As for the reasonableness of relocation to Colombo for a Tamil originating from the north or east of the island, Professor Good observes that, unless one has relatives or friends with whom one can put up, the only alternative except for the well-to-do is to use the crowded and unsanitary accommodation afforded by hostels (usually

known as 'lodges'), where the residents are nearly all young, single men. A close watch is kept by the authorities on these lodges, which are often subjected to raids during cordon-and-search operations. They are not, Professor Good insists, suitable places for single women to stay, far less for women with children to bring up. When it comes to making a living, Tamils in general suffer discrimination in the labour market, but getting a job is particularly difficult for Tamils coming to Colombo from the north or east of the island who do not have a kinship network or personal contacts in the city to put them in touch with employers and to vouch for them. Such Tamils are also unlikely to speak Sinhalese, which increases their difficulties in Colombo, particularly when they are stopped at a checkpoint and cannot explain why they are in Colombo.

34. Indeed, Tamils who are recently arrived in Colombo and who do not seem to have a valid reason for being there are likely to be taken in for questioning if picked up at a checkpoint or during a cordon-and-search operation, and although most are released quickly, some end up in more long-term detention. The most notorious example of the state harassment of Tamils took place on 6th June 2007, when the police raided a number of lodges and rounded up some 291 Tamil men and 85 women, who were packed into buses and driven to their home areas in the north and east of Sri Lanka. Shortly afterwards, however, the Supreme Court intervened to halt the evictions, declaring them illegal, and most of those evicted were subsequently brought back free of charge to the capital. But, says Professor Good, "*the very fact that the evictions took place at all is indicative of current levels of security in Colombo.*" Even though the Supreme Court went on last December to declare cordon-and-search operations an infringement of civil liberties, and to order the dismantling of all permanent security checkpoints, the government got round this by substituting mobile checkpoints, which soon turned into permanent checkpoints manned by mobile units. Professor Good ends his report with a statement made to the House of Commons on 17th January 2008 by the FCO Minister, Kim Howells, deploring the withdrawal of the international mission which had been monitoring the ceasefire (now officially at an end) and the culture of impunity which had been highlighted by the UN High Commissioner for Human Rights on her recent visit to Sri Lanka.

Professor Good's oral evidence

35. In evidence-in-chief, Professor Good was asked only whether the letter dated 25th January 2008 from the British High Commission, reporting an absence of computers at the CID offices in Bandaranaike International Airport, had caused him to alter the view expressed in his report about the availability of records of previous detentions. It had not.

36. In cross-examination, Professor Good acknowledged that, while the hostility between the LTTE and the Karuna faction had manifested itself in Colombo, it was mostly confined to the eastern part of the island. Referring to the murder of high-level Karuna supporters in July 2004 and to the discovery of several bodies in a swamp in March 2007, as detailed in his report, Miss Richards asked whether there had been any other incidents of violence perpetrated by the LTTE against the Karuna group in Colombo. Professor Good was not aware of any, and although there had been a plague of abductions, he could not say how many had been the work of either the Tigers or Karuna supporters.

37. On the question of killings and disappearances, Miss Richards now turned to a report released on 31st October 2007 by the Law & Society Trust in Colombo which, in collaboration with other local NGOs, had analysed the 662 unnatural deaths and 540 disappearances reported throughout the island during the eight-month period from January to August 2007. The victims were nearly all male, and preponderantly young Tamil men. Of the killings, Jaffna, Batticaloa and Vavuniya had the highest scores, with only 11 out of the 662, or 1.66%, taking place in Colombo. For disappearances, Jaffna again topped the poll, but this time Colombo came second, with 78 out of 540, or 14.44%. Professor Good saw no reason to doubt the balance of those figures, while making allowance for the under-reporting of deaths and disappearances. Miss Richards now adduced the centrepiece of her documentary evidence, namely a list of all the reported attacks by bomb or bullet which had taken place in Colombo between October 2004 (the cut-off point for the ‘country guidance’ in *PS* (LTTE – internal flight – sufficiency of protection) [2004] UKIAT 297) and January 2008, which indicated that most of the targets were either high-profile individuals, such as politicians, or military personnel and installations. The list is subdivided into those attacks which can, and those which cannot, be reliably attributed to the LTTE. Again, Professor Good agreed that the information was accurate. He could not think of any other examples of attacks by the LTTE during the relevant period, but emphasized that no one knew exactly who was responsible for the abductions, and that the LTTE might well have perpetrated some of them. Pressed on whether the five bodies found in a swamp in March 2007 belonged to low-level rather than high-level members of the Karuna faction, Professor Good acknowledged that little was known about them, but commented that, although the government was shielding Karuna supporters in Colombo, the protection was not necessarily effective.

38. Miss Richards turned next to the apparent discrepancy between the information provided by the Airline Liaison Officer, *viz* that the CID at the airport have no computers, and what Professor Good says in his report, namely that there is a computerized database of wanted persons at the airport. Professor Good indicated that there might not be a discrepancy after all, in that, while the immigration officers at the airport were certainly computerized, he could not say whether the CID had access to computers. Miss Richards suggested that he was not in a position to know whether the computers at the airport (whoever had access to them) contained information about previous detentions, and whether such detentions were routinely or reliably added to a central database. Professor Good could see no reason to doubt what Dr Smith had reported about his conversation with the Controller of Immigration, that a ‘Stop List’ and a ‘Watch List’ were available at the airport, but could not say for certain who would be on it, save those for whom an arrest warrant had been issued.

39. At this point Miss Richards sought leave to adduce an unreported determination, which contained a criticism of Professor Good and would thereby give the Tribunal a more balanced view of his expertise, when set against the array of unreported cases cited at the outset of his report, which praised him highly. We did not admit this determination, since it was both unreported and outwith the normal time limits for the production of evidence.

Submissions for the Respondent

40. There being no re-examination of Professor Good, Miss Richards commenced her submissions, highlighting the list of attacks in Colombo between October 2004 and January 2008, which indicated that neither low-level members of the LTTE who had left the party nor low-level supporters of other Tamil groups were being targeted by the LTTE in Colombo. Rather, the LTTE were concentrating on high-profile individuals like politicians and army officers and on military targets, as well as some civilian infrastructure. There was no solid evidence that the five men whose bodies were found in a swamp in March 2007 were members of the TMVP who had been killed by the LTTE, rather than casualties of the split within the Karuna group, and this had to be set against what Dr Smith said about the significant reduction in Tamil-on-Tamil violence in Colombo since the end of the ceasefire. Since then, security had been very tight and the freedom of movement for LTTE cadres had been greatly restricted. The number of killings was now at an historic low in Colombo (1.6% of the total for Sri Lanka between January and August last year), and while the number of abductions constituted a much higher percentage (14.4%), these were being carried out by all manner of different groups, with the LTTE by no means taking the lion's share.

41. Miss Richards conceded that, given the current situation in Colombo, she would not be arguing that the Sri Lankan authorities could provide a sufficiency of protection for those whom the LTTE were determined to eliminate, and she accepted Dr Smith's description of the LTTE as a far from emasculated force in Colombo. Was there, on the other hand, any risk from the government forces themselves? Miss Richards thought the evidence was very flimsy for Dr Smith's assertion that any detention, even going back 15 years, is likely to be on a centralized database which will be consulted by the authorities when a failed asylum seeker returns from the United Kingdom. She reminded us that Dr Smith had not corrected his report template when he was informed about the inaccurate information which it gave about two former asylum seekers who had died in Colombo in 2006, and suggested that his report was lacking in balance. His confident assertion that the LTTE had an electronic database containing details of opponents and deserters was mere speculation, for which there was no clear evidence. He was simply extrapolating from the (limited) evidence of a database used by the LTTE for fundraising purposes to a database of all those against whom the LTTE bear a grudge. Professor Good, on the other hand, did not profess to know about databases and what was on them, but had evidence more pertinent to the risk from the LTTE outside Colombo than inside it.

42. In respect of previous 'country guidance' by the Tribunal, Miss Richards submitted that there was less danger from the LTTE in Colombo now than when the Tribunal examined that issue in *PS 04-297*, and insisted that the evidence before us showed that the conclusions set out at (1)-(5) and (7) of the italicized headnote in *LP* (LTTE area – Tamils – Colombo – risk?) [2007] UKAIT 76 still held good as 'country guidance'. For convenience, we shall summarize those conclusions below.

- (1) Tamils are not *per se* at risk of serious harm from the Sri Lankan authorities in Colombo, although there are some twelve factors (not intended to be a check list) which may increase the risk.
- (2) If a person is actively wanted by the police, e.g. by being on a 'Watched' or 'Wanted' list at Bandaranaike International Airport, there may be a risk of detention at the airport.

- (3) Otherwise, the majority of failed returning asylum seekers are processed through the airport relatively quickly and with no difficulty beyond some possible harassment.
- (4) While Tamils in Colombo are at risk of being stopped at a checkpoint or in cordon-and-search operations, or of being caught up in a raid upon the lodge where they are staying, this does not in general amount to 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 identity documents will be subject to more investigation, and the risk factors in (1) 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) ...
- (7) The weight to be given to expert evidence and country background material depends upon the quality of the raw data from which it is drawn and the quality of the filtering process to which those data have been subjected.

43. Miss Richards now turned to the individual circumstances of the one appellant whose substantive appeal still required to be determined by us. She drew our attention to passages from the Country of Origin Information Report of November 2007, which it will be convenient to summarize below, along with the relevant paragraph numbers.

There are about 250,000 Tamils in the Colombo area, out of a total population of roughly 2,250,000 (20.13).

There are an estimated 40,000 war widows in Sri Lanka, and as many as a quarter of all households in Jaffna are now female-headed. Women in Sri Lanka have traditionally enjoyed better levels of literacy, life expectancy and access to economic opportunities than in other parts of South Asia (23.01-23.02).

According to its website, the local NGO 'Home for Human Rights' has created a Women's Desk. "We provide social services and counselling for survivors of sexual and domestic violence. We have also organised self-help groups for single mothers in the Northern and Eastern provinces ... " (23.26).

According to the Mental Health Policy for Sri Lanka, published by the Sri Lankan government in 2005, "Mental illness is extremely common. It has been estimated that some 376,000 Sri Lankans suffer from debilitating mental illnesses including bipolar illness, major depression and schizophrenia at any given time. ... About 10% of the population is thought to suffer from other mental illness such as phobic states, obsessional disorders, somatoform disorders, mood disorders and other forms of delusional disorders." The document notes that more than 90% of mental health services are concentrated in Colombo and a few other major urban centres, with treatment taking place mostly in large hospitals, such as the National Hospital in Colombo. "All the patients receiving mental health services from the government sector receive the services and drugs free of charge." There are, however, severe shortages of skilled mental health staff, with only 41 psychiatrists available for the whole country, a few psychologists, and no psychiatric nurses. On the other hand, "There are several important NGOs, including Sahanaya in Colombo" which "provide psychiatric assessment and treatment, psychological interventions, and rehabilitation for both individuals and families." The document fears that, in the wake of the tsunami on 26th December 2004, between 5% and 10% of those affected by it "are likely to develop a recognizable mental disorder." (26.13-26.16)

According to the Canadian High Commission in Colombo, "forged birth certificates can be obtained for as little as US\$5, while genuine, but improperly issued, birth certificates can be acquired for as little as US\$20 each. With these types of birth certificates, genuine NICs can be issued ..." There are no security features in Sri Lankan birth certificates (32.07).

44. Miss Richards next referred us to the Hotham Mission field trip to Sri Lanka, whose report was published in November 2006. At page 41 we read that “awareness of mental health issues has increased somewhat following the 2004 tsunami and the devastating grief and loss impact felt by the entire country.” But the report highlights the shortage of mental health practitioners, with only 35 psychiatrists in the whole country, and only limited facilities available for mental health in-patients. An exception to this, however, is “the Angoda Mental Hospital in Colombo” which “is a leading service provider, offering a comprehensive range of psychiatric and psychosocial support services to patients.” The report goes on at page 52 to give the following information obtained from the International Organisation for Migration.

“A brief overview of the support provided by IOM includes smoothing the re-entry process by liaising with Sri Lankan immigration and capacity building with airport officials and staff prior to the return, and provision of a comprehensive package of support for five years after arrival. This includes provision of five years shelter guaranteed (a reflection of and necessitated by the difficult housing situation in Sri Lanka), assessing capacity for livelihood, competency and vocational training ... IOM were aware of returnees not assisted by their program being arrested and harassed on or soon after arrival, particularly in cases where the returnee no longer holds a National Identity Card.”

45. On this last point, the British High Commission’s letter of 25th January 2008 adds more recent information :

“The International Organisation for Migration (IOM) have advised the High Commission that whilst they monitor the persons who return from the UK under the Voluntary Assisted Return Programme (VARP) for up to 2 years, they do not monitor those who are forcibly returned. I was advised that even among the VARP returnees there were 2 cases in the last year where individuals have been arrested and detained. The first was a young Tamil male from Jaffna who was going through a reintegration programme in Colombo. Some six months after his return, he was stopped at a police checkpoint and detained, as he could provide no evidence of family in the capital. He was held at Boossa prison for one month before release, but is now back in the reintegration programme. The 2nd case also involved a Tamil male who was in the reintegration programme in Colombo. The circumstances of his arrest were somewhat different, in that he had travelled to India on forged documentation and was apprehended by CID on his return to Colombo and detained. It could therefore be argued that there might have indeed been justification for this.

“IOM have also become involved with returnees who have forcibly been removed from the UK, providing post-arrival assistance. Ostensibly, this is to provide travel assistance to a chosen address. At the time of writing, IOM had been informed of 32 potential removals under this arrangement, of which they received only 8 returnees. Whilst a majority of the ones that did not arrive undoubtedly earned last-minute reprieves in the UK by one means or another, IOM could not be 100% certain that some were not detained on arrival at Colombo Airport.”

46. The BHC letter goes on to note that on 7th January 2008 the Supreme Court ordered the Defence Secretary to stop the security forces from searching residential premises between 9 p.m. and 6 a.m., although this prohibition does not extend to the police. An official from the Centre for Human Rights and Development is quoted for the following information –

“approximately 1500 persons have been arrested at street checkpoints in Colombo recently and most of them were released after 2-3 days. Of the rest about 103 were sent to Boossa detention centre near Galle and a few were kept in [the] Terrorists Investigation Department (TID) office at Chaiyttaya Road, Colombo 1. Most have been released after investigation as ordered by the Supreme Court in response to a Fundamental Rights Case filed by the Ceylon Workers Congress. We understand the general population of prisoners detained at Boossa detention camp and TID office in Colombo is about 550 at present.”

47. Relying on the above information, Miss Richards now set out her case that AN faces neither a real risk of persecution or serious ill-treatment in Colombo, nor undue harshness in adapting to life there with her child. She reminded us first of the twelve ‘risk factors’ listed at the end of *LP 07-76*, which it will be convenient to recapitulate here.

- (i) Tamil ethnicity;
- (ii) Previous record as a suspected or actual LTTE member or supporter;
- (iii) Previous criminal record and/or outstanding arrest warrant;
- (iv) Bail/jumping and/or escaping from custody;
- (v) Having signed a confession or similar document;
- (vi) Having been asked by the security forces to become an informer;
- (vii) The presence of scarring;
- (viii) Returned from London or other centre of LTTE activity or fund-raising;
- (ix) Illegal departure from Sri Lanka;
- (x) Lack of ID card or other documentation;
- (xi) Having made an asylum claim abroad; and
- (xii) Having relatives in the LTTE.

48. Of those twelve factors, five – (iii), (iv), (v), (vi) and (xii) – had no application to Miss AN. Whether (ii) had any application was, of course, in dispute before us, and Miss Richards reiterated her contention that the evidence simply did not establish any likelihood that the appellant’s detention in 1998, after which the authorities showed no interest in her, would appear in records available to the authorities in Colombo. The appellant did admittedly have some scarring, but it was not prominent, and Miss Richards did not think that, even in combination with factors (i), (viii), (ix) and (xi), it would create a real risk for her.

49. The remaining factor was the lack of an ID card, but Miss Richards reminded us that the appellant had left her ID card in Sri Lanka, and there was no reason to suppose that she could not get it back, or at least obtain the relevant information to be found on it, such as the serial number, which would enable her to get a replacement in Colombo. The original card would either be at home, in which case the appellant could get hold of the necessary information through her parents’ neighbours, with whom she was in regular contact, or it would be with the EPDP, who had provided a haven for her in Vavuniya and then in Mankulam after she left Jaffna. Miss Richards also mentioned the alternative route of getting a replacement ID card in Colombo through production of the appellant’s birth certificate, and alluded to the possibility of buying a false one – something which the appellant had shown, through her willingness to travel to the UK on a false passport, that she had no objection to in principle. Miss Richards did not, however, rely on the availability of forged documents in Sri Lanka, and submitted that if all else failed, an ‘unofficial’ ID card could be obtained from the UNHCR.

50. It would not be unduly harsh, Miss Richards continued, for the appellant to relocate to Colombo. The EPDP had shown themselves very considerate towards her in the past, providing her with accommodation in Vavuniya and Mankulam, and arranging for an agent to take her out of the country. There was no reason to suppose they would not help her in Colombo. Besides, the background evidence showed that a number of non-governmental organisations were operating in Colombo with the objects of assisting women, including lone women with children, and of assisting people with mental health problems. Best of all, the IOM was offering a very generous support package to those who returned from the UK voluntarily. There was no reason to suppose that the appellant would not choose to make a voluntary departure if her appeal were ultimately unsuccessful, especially given the appropriate feeling of responsibility which she was displaying towards her child. Indeed, this sense of responsibility had mitigated any suicidal ideation which might have afflicted the appellant in the past, while according to Dr Harrison her depressive disorder was now also in abeyance, and she was currently receiving no other treatment save medication. Similar drugs were available free of charge in Colombo, and although psychiatric services were scarce in Sri Lanka, those that did exist were largely concentrated in the capital.

51. Miss Richards reminded us of the very high threshold set by the ‘health cases’ such as *N* at the House of Lords and *Bensaid v United Kingdom* at the European Court for the engagement of either Article 3 or Article 8, and drew attention to the evidence that large numbers of people in Sri Lanka were suffering from mental health problems, particularly after the tsunami. This would make whatever mental health problems the appellant suffered from much less likely to excite surprise and disapproval. Dr Harrison had predicted that the appellant would become distressed if she were stopped and questioned at a checkpoint, and would not be able to give an account of herself. But it was a common experience for people to become distressed under interrogation. That would not in itself arouse suspicion, and besides, if a newcomer to Colombo needed a valid reason to be there, the appellant could cite treatment for her mental illness, which was not readily available outside the capital.

52. Nor would being an unmarried mother make life in Colombo unduly harsh. The background evidence showed that a large number of households were now female-headed, and while being an unmarried mother was not the same thing as being a widow with children, Miss Richards reminded us that the appellant had for several years lived in an unmarried relationship with a man in Jaffna, and had shown thereby that she was willing to put up with any stigma attaching to such a break with convention.

Submissions for Miss AN

53. In response, Mr Mackenzie argued that, contrary to Miss Richards’ suggestion that the worsening security situation made it less likely that the LTTE would target someone like Miss AN, it was now more likely that the appellant would be at risk also from state agents, for example because she was more likely to be interrogated on return. Indeed, Mr Mackenzie invited us to add the following two categories to the twelve risk factors identified in *LP* :

- Serious mental health problems making one behave suspiciously under interrogation [and Miss Richards did not deny that AN would become distressed in those circumstances];
- Living in Colombo but originating in the north or east of Sri Lanka [which would not be a matter of concern to the authorities at the airport, but would concern those manning the checkpoints or carrying out cordon-and-search operations].

54. Mr Mackenzie also took issue with Miss Richards’ suggestion that the expert witnesses before us had been indulging in speculation when giving their opinion about the records that might be kept by the LTTE and by the state authorities. Their opinions were not the product of speculation, but of their experience and judgment. Mr Mackenzie disagreed with the view expressed at paragraph 18 of *LP* that “*the role of a ‘country expert’ in an appeal before the AIT is ... to assist with the provision of the ‘raw data’, in terms of providing the comprehensive and balanced factual information relating to the issues the Tribunal must resolve.*” This was to make an artificial distinction between ‘objective’ facts and their ‘subjective’ interpretation. An expert was entitled – on the basis of his knowledge, expertise and experience – to go beyond his sources and form opinions. Dr Smith’s opinions had often turned out to be right, as the panel in *LP* had themselves acknowledged at paragraph 217 : “*We agree with the comments in Dr Smith’s report that the issue of scarring was considered by the police to be a very serious indicator of whether a Tamil might have been involved in the LTTE.*” Similarly, the panel accepted that records on returnees would be available at the airport, finding at paragraph 228 that “*there is a reasonable likelihood that records relating to [LP] will be held either on computer or other records at the airport because of the acceptance that his case has been before the courts and he has been released on formal bail.*”

55. Set against that, it was difficult to see where Dr Smith had overstated his case or reached speculative conclusions, as alleged at paragraph 198 of the determination. At paragraph 41 he was criticised for saying that the appellant “*will automatically have been placed on one of the two lists that are provided to immigration services at the airport by the security forces*”, because it became apparent to the panel on closer examination that “*there was no basis for saying that at all.*” This called in question “*Dr Smith’s ability to give expert opinion evidence impartially and objectively.*” And yet the panel ended up at paragraph 227 accepting that LP was indeed likely to be detained at the airport, because of computer records about him. In fact, the only criticism of Dr Smith in *LP* which stood up was his failure to mention that the two failed asylum seekers who had died in Colombo in 2006 had been removed from the United Kingdom several years before – not a huge flaw in his report.

56. Mr Mackenzie regretted that a more collaborative approach was not taken in country guidance cases, with the Home Office instructing its own expert witnesses, as it had been encouraged to do by the Court of Appeal in *AH (Sudan)* [2007] EWCA Civ 297. When *AH (Sudan)* came before the House of Lords ([2007] UKHL 49), the Tribunal was itself found to have lapsed into infelicities of expression, but it was still accorded the respect due to an expert tribunal. That too should be the attitude of the Tribunal towards an expert witness.

57. There followed a digression in which Mr Mackenzie argued that experts ought not to be prevented from citing unreported AIT cases. The mischief sought to be avoided by the President’s Practice Direction 17.6 was the use by advocates of

unreported cases to support their arguments. That was a different matter from expert witnesses bringing up facts from unreported cases. Miss Richards was of the opposite view, and urged us not to drive a coach and horses through the Practice Direction. We can say at this point that Practice Direction 17.7-17.8 already makes provision for the use of unreported determinations where an important point cannot be substantiated in any other way, and it is open to a party to apply for permission to cite such determinations. But it would be quite artificial to distinguish between a lawyer's use and an expert's use of an unreported determination, and the Practice Direction will have to be rewritten if experts are to have *carte blanche* to use unreported determinations.

58. Returning to AN's case, Mr Mackenzie asked us to take as our starting point the three categories identified in *PS 04-297* as likely to be at risk from the LTTE, namely

- (1) prominent present or past supporters of Tamil political parties which have aligned themselves with the government against the LTTE ;
- (2) LTTE defectors (particularly those who have aligned themselves with the Sri Lankan Army military intelligence units); and
- (3) Those closely associated with the internal LTTE schism as supporters of Colonel Karuna.

59. These categories are said at paragraph 59 of *PS* to have "*a high profile which makes them particularly likely to be the object of LTTE reprisals*", while at paragraph 61 the panel refers to these three categories as comprising "*high level activists or opponents*." Mr Mackenzie would understand the syntax of this phrase as linking "*high level*" with "*activists*" but not with "*opponents*". He finds support for this interpretation in the panel's conclusion at paragraph 71 that those targeted in Colombo by the LTTE since the ceasefire have all been "*high profile opposition activists*" or those whom the LTTE regard as "*renegades or traitors*." This suggests to Mr Mackenzie that defectors from the LTTE have *per se* a high profile, and that Miss AN, who qualifies as a defector by virtue of having left the TRO and joined the EPDP, therefore has a high profile and comes within the ambit of the risk categories in *PS*.

60. We have to say at this point that such linguistic sleight-of-hand is ingenious rather than helpful. It is as plain as a pikestaff that the adjectival phrase "*high level*" at paragraph 61 qualifies both "*activists*" and "*opponents*", which is confirmed by the linking of the two notions in the phrase "*high profile opposition activists*" at paragraph 71. On the other hand, there is no necessary connection, linguistically or practically, between someone whom we may describe as a 'defector' and those whom the LTTE "*would see as renegades or traitors*." Thus, someone who lost her job as a library assistant with the Tamil Rehabilitation Organisation and became a development officer with the EPDP three years later would certainly be a person who had once helped an outfit affiliated with the LTTE and had later supported a group opposed to the LTTE. But whether that would be enough to make her a "*renegade or traitor*" whom the LTTE in Colombo would seek to punish is another question. We do not understand the IAT in *PS* to be making a distinction between opposition activists, who have never assisted the LTTE and must therefore be 'high profile' in order to risk elimination by them, and opponents who once helped the LTTE in however lowly a capacity, and who will be terminated if they have since helped a

rival organisation. The *degree* of support given to the LTTE and subsequently to another Tamil group cannot, we think, be left out of the reckoning.

61. Mr Mackenzie's next point was that there was no suggestion of a general risk to the majority of Tamils in Colombo. The focus was rather on the much smaller group of Tamils who had come to the capital from the North and East, a group to which Miss AN would be assimilated if she got through the airport. In assessing the risk to them, one had to distinguish between the mass of unfiltered "facts" set out in the list of incidents between October 2004 and January 2008, which was the centrepiece of the respondent's evidence, and the expert reports which gave such facts context and focus. One could not in any event tell how truly comprehensive this list was, as the news items were all taken from the Internet and were all in English. But one could certainly infer from the murder of five rank-and-file members of the Karuna faction that the LTTE maintains an active hostility to all who support that faction.

62. How likely was it that opponents of the LTTE would be on a database? The Human Rights Watch report, *Funding the "Final War" : LTTE Intimidation and Extortion in the Tamil Diaspora* certainly showed that the LTTE maintain a database of contributors outside Sri Lanka, and that such people have been asked for more contributions while visiting Sri Lanka itself. It would be surprising if such a sophisticated, brutal and efficient organisation as the LTTE did not have a central record-keeping facility which included information on its opponents.

63. As for the issue of internal flight, the *dictum* in *LP* that relocation to Colombo would not in general be unduly harsh for Tamils was pronounced at a time when mass round-ups were not prevalent. The BHC letter of 25th January 2008 gave 550 as the current population of Boossa detention camp and the TID office in Colombo – too high a figure for them all to be serious suspects – and also quoted the secretary of the Human Rights Commission as saying that "*there were a few reported cases of torture under detention.*" There were likely to be many more that went unreported. Mr Mackenzie accepted that awareness of mental health problems had increased in Sri Lanka, but insisted that there was still a stigma.

64. Any doubt that the Tamil Rehabilitation Organisation was a front for the LTTE was, Mr Mackenzie continued, dispelled by pages 202 and 233 of the November 2007 COIS Report, which refer to raids by French counter-terrorist personnel on three LTTE organisations in Paris, including the TRO, and to the LTTE's insistence that international NGOs operating in the Vanni channel funds to be used for development purposes through the TRO.

65. Returning to the theme of record-keeping, Mr Mackenzie referred us to 32.08 of the COIS Report for what a Home Office delegation was told at a meeting on 21st March 2002 with the Director of the CID, namely that there were computerized records in the South of the country only, and that details of arrests etc. which were sent from the North would be transferred to computer. As for the international airport, "*There are no photographs of wanted persons at the airport, only computerised records.*" This suggested that the CID at the airport did have computers, contrary to what the Airline Liaison Officer had observed. That there was a central database was confirmed at 32.16 of the COIS Report, which quotes the finding of the Hotham Mission in October 2006 that "*Sri Lanka's National*

Intelligence Bureau keeps records on people dating back more than ten years and, since 2004, has been using a national computerized database.” The Hotham Mission also found that *“persons returning to Sri Lanka who have had previous problems with the government of Sri Lanka may be detained by the police upon their arrival.”* More specifically, *“persons who have been detained or questioned in the past are more likely to be arrested.”* Putting the two together, Mr Mackenzie inferred that people who have been detained in the past will be on the national computerized database.

66. As for the reasonableness of relocation to Colombo, Mr Mackenzie reminded us of the medical evidence that AN’s psychiatric condition would deteriorate if she were forced to live there. Her family could not be expected to move down from Jaffna, even if this were possible in the current circumstances, and share her difficulties in finding accommodation, employment, etc. She would not go back voluntarily under the auspices of the IOM. Internal flight would simply not be an option.

Reply for the respondent

67. Responding to the criticism of her list of violent incidents in Colombo between October 2004 and January 2008, Miss Richards insisted that it was comprehensive. Neither expert had been able to add anything to it. As for the two extra ‘risk categories’ which Mr Mackenzie proposed adding to the twelve listed in *LP*, Miss Richards thought that serious mental health problems might in rare cases, such as that of Mr SS, create a real risk. But this would be too rare to constitute a general category. Nor should Tamils originating from the North and East form a separate category from Tamils long settled in Colombo. There were a great many of the former, and they were not necessarily more likely to be working for the LTTE than the latter. A report in *The Lanka Academic* of 27th August 2006 told of the thwarting of a bomb plot and the arrest of 17 Tamils, most of whom had been living on the outskirts of Colombo for nearly 15 years.

68. Going on to the reasonableness of internal relocation, Miss Richards referred to a letter of 31st January 2008 from Dr Ganesan, a consultant psychiatrist at the Teaching Hospital in Batticaloa, who deplores the absence of treatment for detainees with mental health problems, and the difficulties faced by Tamils who are not in detention and who need treatment, since most mental health personnel speak only Sinhala. In Colombo, mental health services are based mainly in *“the two large asylum-type mental hospitals”*, to which people tend not to come voluntarily for treatment as *“the quality of service here is poor.”* But Miss AN would not, we were reminded, have to depend on this rather forbidding regime for any mental health problems which might afflict her in Colombo. Non-governmental organisations such as Sahanaya provided support both for women and for those with mental health problems, while the IOM could provide accommodation and the basic necessities for as long as five years. There was no reason to suppose that the appellant would refuse to avail herself of such assistance. Indeed, she had shown herself able to cope in the past, getting a job after her terrible experiences in 1998, living with a partner in Jaffna, having a child in London, and so forth.

Reply for Miss AN

69. In his final submissions, Mr Mackenzie decried the possibility that Miss AN would be supported in Colombo by either the IOM or the EPDP. The fact that she might have coped in the past did not mean that she could cope now, indeed the

medical evidence went the other way. As for the risk to Tamils generally in Colombo, Mr Mackenzie thought there was no statistical basis for Miss Richards' confident assertion that there are large numbers of Tamils from the North and East in Colombo. What was certain, however, was that thousands of Tamils had been detained for no better reason than that they could not give a satisfactory explanation for being in Colombo. This was an aspect of the unduly harsh treatment which awaited the appellant there.

The 'Exclusion Clause'

70. When we reached the end of oral submissions on 13th February, the case was adjourned so that written submissions could be prepared on an issue which had arisen in the course of proceedings, namely whether Mr SS, whose return to Sri Lanka was precluded by his serious mental illness, was excluded from the Refugee Convention because of his activities while he was a member of the LTTE. A letter of 15th February from the Presenting Officers Unit at Angel Square cited both "*individual criminal responsibility*", in that SS had participated in the assassination of civilians, and "*complicity in international crimes*" in that SS had for 14 years been an active combatant for an organisation which was responsible for widespread and systematic war crimes and crimes against humanity. In the written submissions which followed, Miss Richards reminded us that Article 1F is mandatory, in that, if there are "*serious reasons for considering that*" a person has done any of the things listed at (a), (b) or (c) of that Article, he must be excluded from the Convention, as emphasized in paragraph 38 of *Gurung** [2002] UKIAT 4870. In the appellant's case, he was condemned out of his own mouth for the assassinations he had helped to carry out, which were war crimes under the terms of the Rome Statute of the International Criminal Court (which includes "*intentionally directing attacks ... against civilians not taking a direct part in hostilities*"). Furthermore, it could be readily inferred that the appellant had a full understanding of the aims, methods and activities of the LTTE and that he was therefore complicit in them. These included persecution on religious, ethnic and political grounds, torture and the murder of prisoners of war, which were "*acts contrary to the purposes and principles of the United Nations.*"

71. Rebutting this submission, Mr Morris adduced a report by a Californian attorney, Dr Karen Parker, who specializes in human rights and humanitarian law and in international law. The main thrust of her report is to debunk the notion that the LTTE is predominantly a terrorist organisation. On the contrary, it is said to be engaged in a war of national liberation or a civil war, and is thus a combatant force in an armed conflict. The Tamil Tigers cannot legally, it is asserted, be both combatants and terrorists, and the appellant is not to be regarded as a terrorist simply for being a combatant member of the LTTE. Mr Morris asks us not to make the present case the basis for general guidance on the approach to be taken to exclusion, and reminds us that the issue of whether LTTE combatants are *per se* excluded from the Refugee Convention is to be the subject of a separate reported case.

72. We readily accede to that request, and confine ourselves to the question whether SS's individual acts while serving as an LTTE combatant bring him within Article 1F(a) and (c). Mr Morris submits that the evidence given by SS himself in his asylum interview and witness statements "*does not establish to the requisite standard of proof that there was a direct nexus between his behaviour and a grave violation of the laws and customs of war*", for the following reasons :

- (a) there is insufficient evidence that he had prior knowledge of the purpose of the combatants that he taxied;
- (b) it does not appear that he had any role in planning or forming an intent to carry out the acts in question;
- (c) he was not a driver exclusively for this type of operation; and
- (d) he did not personally fire at or kill the MPs.

73. In response to Mr Morris, Miss Richards regards the Parker report as viewing the LTTE with rose-tinted spectacles, when all the evidence points to their being an extremely nasty bunch. But as to whether a member of the LTTE is to be regarded as “*complicit*” in all the atrocities perpetrated by the LTTE, simply by virtue of being one of the ‘Tigers’ himself, is a matter which has been listed for separate ‘country guidance’, and is to be heard by the Tribunal on 23rd-25th June. We need therefore make no comment of our own on whether the Tigers merit the appellation “terrorists”. Suffice to say that we agree with Miss Richards that the attempt to minimize the appellant’s involvement in acts which clearly were terrorist in nature will not stand scrutiny. If the appellant had just driven the assassination squad once, he could perhaps claim not to have understood fully what he was getting himself into. But he took part repeatedly, over a period of years, in missions to eliminate civilians – politicians, businessmen and members of rival Tamil groups – who were opposed to the Tigers. It matters not that he did not plan the missions himself, or that he did not pull the trigger himself, or even that this was not the only thing he was doing for the Tigers during the period 1998-2002. In a mission of this sort, the driver of the getaway car is just as necessary a part of the team as the marksman who takes aim at the target. It is ludicrous to suppose that the appellant did not understand the purpose of the missions he was going on, and there is no hint in his evidence that he was acting under duress. On the contrary, so impressed was the LTTE leadership with his enthusiasm that they awarded him a medal.

74. Although the evidential burden rests, as explained in *Gurung* and *KK* [2004] UKIAT 101, on the Secretary of State, the standard of proof as to “*serious reasons for considering*” is lower than both the criminal and the ordinary civil standards. We find, on the account of his activities put forward by the appellant and accepted by the immigration judge on his appeal, that he has indeed committed war crimes and crimes against humanity, and is guilty of acts contrary to the purposes and principles of the United Nations, thus warranting his exclusion from the protection of the Refugee Convention. Similarly, he is excluded from a grant of humanitarian protection by virtue of paragraph 339D(i) and (ii) of the Immigration Rules. But because of its absolute nature, SS is protected from removal by Article 3 of the European Convention on Human Rights.

Further evidence and submissions

75. It is sometimes necessary, but it is never desirable, to invite the parties to send in further written submissions after the hearing of an appeal. It was necessary in the instant case because the issue of the ‘exclusion clauses’ arose in the course of proceedings. But along with Karen Parker’s report and Mr Morris’s submissions, dealing with that point, Birnberg Peirce & Partners also raised three different matters, which they asked the Tribunal to take into account.

76. First came passages in the COIS Report which had not been drawn to the panel's attention during the hearing. The entry for 1st January 2007 announces the issuance of "*the first high-tech identity card with a Social Security Number, by which a person is identified in a computer network, to LTTE chief Velupillai Prabhakaran.*" This was done by the Commissioner of the Tamil Eelam Department of Registration of Persons, the idea being that civilians living in areas under LTTE control should get ID cards issued by that organisation. In response, the Sri Lankan government announced the next day that it would "*take legal action against any institution or organization that is issuing bogus identity cards.*" Then comes a reference to 31.08 of the COIS Report, about an article dated 20th August 2004 in the *Daily News*. This describes a visit to the Department for Registration of Persons ('DRP') by a security official, who found it in "*an appalling condition.*" He was also "*surprised to learn that identity cards had been issued on the production merely of photocopies of birth certificates, while the original certificate should be shown.*"

77. From this information the solicitors derive the following propositions. The LTTE "*has a database which is maintained in Sri Lanka and which goes beyond mere fundraising records.*" This shows the technical sophistication of the LTTE and lends support to Dr Smith's view that "*it is also likely to maintain databases of its opponents.*" The government's reaction to the notion of ID cards issued by the LTTE is said to call in question the usefulness of ID cards issued by the UNHCR, while the article about the DRP is said to indicate that it is not possible to obtain new ID cards without original documentation.

78. In response to this, Miss Richards protested that the solicitors were seeking to make submissions on material that was available at the time of the hearing and to adduce further evidence following the conclusion of the hearing. But regarding the passages cited from the COIS Report, Miss Richards did not think that the inclusion of social security numbers in a computer network meant that the LTTE had a database of its opponents. Nor did she think that the government would regard ID cards issued by the UNHCR as "*bogus*" in the way that it would the ID cards issued by the authorities of a pseudo-separate state. She did not understand the *Daily News* article to mean that ID cards could not be obtained without original documents. The article was saying the opposite.

79. The second matter raised by Birnberg Peirce & Partners was *FK (Kenya)* [2008] EWCA Civ 119, in which the Court of Appeal examined the 'country guidance' in *FK* (FGM – risk and relocation) [2007] UKAIT 41. Sedley LJ made the point that an expert was entitled to reach views on the basis of his experience without having to give specific sources. This showed, said the solicitors, that "*giving an opinion which is properly based on broad experience does not constitute speculation.*" In reply, Miss Richards did not take issue with this general point, but said that it did not affect her submissions on the expert evidence in the present case.

80. The third matter raised by the solicitors concerned the continuation of *PR* (medical facilities) CG [2002] UKIAT 4269 as country guidance. Its antiquity is said to make it out of date, and it should therefore be expunged from the list of 'country guidance' cases. Miss Richards contends that, while the panel in the instant case has considered evidence about the availability of psychiatric treatment in Colombo, *PR* deals with the availability of medical treatment generally throughout the whole island,

and still provides useful guidance on this. It seems to us, looking at the long list of country guidance cases promulgated in 2002 and 2003 which were deleted in *LP*, and of which two concerned medical matters, that *PR* may simply have been overlooked. The evidence taken into account in that case will now be at least six years old and, the ceasefire having come and gone since then, can hardly be the starting point for an up-to-date assessment.

81. Miss Richards was much more concerned about the request by Birnberg Peirce to adduce a report on Miss AN by Sunila Abeysekera, a leading feminist and human rights activist in Sri Lanka, who received a United Nations Human Rights Award in 1998. The late admission of this report (which Birnberg Peirce had commissioned well before the hearing) is said to be justified by the late arrival (just before the hearing) of Miss Richards' skeleton argument, which contained virtually nothing on internal flight. Miss AN was thus, say the solicitors, taken by surprise regarding several of the points raised by Miss Richards in the course of the hearing, such as the assertions that she could obtain the assistance of women's groups and the EPDP in Colombo, and that she would not be stigmatized as a single mother because of the large number of 'war widows' in the country.

82. Miss Richards contends that this new expert report does not deal with these specific points but rather with wider issues which were fully explored by Dr Smith and Prof. Good. She also objects to the report's being put before the Tribunal in circumstances where it cannot be tested and challenged. But if it is to be admitted, Miss Richards asks us to exclude those general issues – such as arrival at the airport, cordon-and-search operations, and identity cards – and to treat with scepticism the sweeping remarks of Sunila Abeysekera about the complete unavailability of any assistance for the appellant in Colombo, whether in providing accommodation, helping with employment, or anything else. This, she submits, ignores the assistance given by the IOM.

83. The Tribunal had not given leave for this report to be adduced when Birnberg Peirce replied to Miss Richards' objections by arguing that the report had to be read as a whole and could not have parts artificially excised. The solicitors regretted the late arrival of the report, but they were doing their best to help the Tribunal in its task of giving possible country guidance. With that in mind, it was necessary for the Tribunal to pay particular attention to the following points made by Ms Abeysekera.

- It is extremely uncommon to find unaccompanied women living by themselves. War widows are to be distinguished from unmarried mothers, who are regarded as "immoral" women.
- While there is one women's shelter in Colombo providing accommodation for victims of domestic violence, the appellant does not come within that category. There is in fact no institution, government or private, that can offer the appellant any protection or assistance as a single mother without family support and with mental health problems.
- There is a series of checkpoints along the road from Bandaranaike International Airport to Colombo, which Miss AN would have difficulty in negotiating without a National Identity Card. This would also be a problem in Colombo itself.
- Tamil women have fallen under suspicion because of the female suicide bombers who have carried out missions in Colombo, such as the attempt to assassinate the

EDPD leader, Devananda, in November 2007 and the blast at a railway station in January 2008.

- The LTTE's intelligence and surveillance is so thorough that, whether or not they have a computer database of their opponents, they will know all about Miss AN's detention in 1998, her subsequent work for the EPDP and her relationship with an EPDP cadre.
- In 2004 Ms Abeysekera personally handled a case in which a woman with a burn scar was held at a police station on the road from the airport to Colombo on the basis that she could have got the scar during LTTE training.

84. As will have been observed, quite a number of matters have been raised on behalf of AN, and responded to by Miss Richards, which are quite separate from the question of whether SS is excluded from the Refugee Convention, that being the only matter on which further submissions were required after the hearing. Apart from this unsolicited material, the Tribunal has itself added to the post-hearing complexity by informally inviting the parties to comment on three topics :

- (i) a report from Human Rights Watch ('HRW'), *Recurring Nightmare – State Responsibility for “Disappearances” and Abductions in Sri Lanka*, which was published just after the hearing;
- (ii) the fact that international observers have just pulled out of Sri Lanka, now that the ceasefire is officially at an end; and
- (iii) the letter of 23rd October 2007 from the European Court of Human Rights (publicized in the ILPA mailing) adverting to the application of Rule 39 to Sri Lankan cases pending at Strasbourg, and requesting Her Majesty's Government to defer the removal to Sri Lanka of any Tamil asylum seekers, until there has been a substantive ruling by the Court on the safety of return.

85. Miss Richards response to the first of these topics is that the HRW report is largely consistent with what the Tribunal has already seen from the Law & Society Trust report about abductions and disappearances, namely that they have predominantly occurred in the North and East of the island, that the LTTE's involvement in them is low, that in Colombo various groups (including the Karuna faction and the EPDP, as well as criminal gangs) have used them as a means of extorting funds, and that in Colombo many of the victims have been businessmen or people who have come to the capital in order to arrange their onward travel abroad. None of this, says Miss Richards, reinforces AN's claim to be at risk. Insofar as HRW regards the response of the Sri Lankan government to these abductions as grossly inadequate, the Secretary of State *“has not sought to raise a sufficiency of protection argument in these appeals”*, although she *“reserves the right to raise arguments as to sufficiency of protection in other cases.”*

86. On the second topic, Miss Richards notes that on 6th March 2008 the International Independent Group of Eminent Persons ('IIGEP'), a team of eleven foreign judicial and forensic experts, announced the end of its observation of the work of the Commission of Inquiry which the Sri Lankan government had appointed to investigate certain high-profile human rights abuses. This decision, contends Miss Richards, was not a response to any deterioration in the security situation, and has no relevance to Miss AN's case.

87. Thirdly, Miss Richards notes that the request from the Strasbourg court was prompted by the plethora of applications which it was receiving, and invites the

Tribunal to read the judgment of Collins J in *Thangeswarajah & ors* [2007] EWHC 3288 (Admin), dealing with five applications for judicial review by Tamil asylum seekers and commenting on the letter from Strasbourg. Although permission applications are not normally to be cited, Miss Richards thinks his Lordship's view is pertinent to this third matter, which the Tribunal itself raised. What Mr Justice Collins says is that the Rule 39 applications in Strasbourg have tended to be completely one-sided – no mention being made, for example, of adverse credibility findings reached in previous appeals by the applicants - and that a blanket ban on return to Sri Lanka simply because an individual is a Tamil cannot be supported. If that is the approach of the European Court, it is not in accordance with what is required by the Convention.

88. Miss Richards also invites us to take note of Collins J's observations on the country guidance in *LP*. Setting out the twelve 'risk factors' identified by the Tribunal, his Lordship takes the view that some of them are better characterized as 'background factors', in that "*they do not in themselves indicate a real risk, but they are matters which, if there is a factor which does give rise to a real risk that the individual will be suspected of involvement in the LTTE, add to the significance of that.*" The factors which are properly to be regarded as 'background factors' are (retaining the Tribunal's numbering) :

- (i) Tamil ethnicity;
- (ii) ...
- (iii) ...
- (iv) ...
- (v) ...
- (vi) ...
- (vii) The presence of scarring;
- (viii) Return from London;
- (ix) Illegal departure from Sri Lanka;
- (x) Lack of ID card (unless it goes beyond the period in which the individual might be expected to obtain an ID card after return);
- (xi) Having made an asylum claim abroad;
- (xii) ...

89. The remaining factors are the ones which are properly to be regarded as risk factors *per se*, these being :

- (ii) previous record as a suspected or actual LTTE member or supporter;
- (iii) previous criminal record and/or outstanding arrest warrant;
- (iv) bail jumping and/or escaping from custody;
- (v) having signed a confession or similar document;
- (vi) having been asked by the security forces to become an informer;
- ...
- (xii) having relatives in the LTTE.

90. Having regard then both to the 'risk factors' properly so called and to the 'background factors', his Lordship says this at paragraph 16 of his judgment :

"The test therefore, as I see it, is whether there are factors in an individual case, one or more, which might indicate that the authorities would regard the individual as

someone who may well have been involved with the LTTE in a sufficiently significant fashion to warrant his detention or interrogation.”

91. Birnberg Peirce & Partners now responded in turn to Miss Richards’ submissions on the three topics which had been raised by the Tribunal. On the withdrawal of the IIGEP from its scrutiny of the Commission of Inquiry, they submitted that this indicated a lack of genuine commitment to human rights on the part of the Sri Lankan government. On the letter from the ECtHR, they submitted that this confirmed the seriousness of the deterioration in the human rights situation in Sri Lanka. The solicitors had more to say on the new HRW report, which revealed a further risk arising mainly (though not exclusively) to young Tamil men, in addition to official detention and the possibility of torture while in such detention. This was abduction of Tamils suspected of supporting the LTTE, even at a low level, by members of paramilitary groups operating with the connivance of the security forces. Low-level supporters who had not previously been detained might be identified now by the examination of photographs and video footage from the ceasefire period, when the LTTE organized parades and demonstrations in the North and many people openly participated in them.

92. Birnberg Peirce criticized the stance taken on behalf of the Secretary of State in respect of sufficiency of protection, namely that she would not rely on such an argument in the present case, but reserved the right to raise it in the future. This was not acceptable in a potential country guidance case. *“If the SSHD considers there is sufficiency of protection available, she ought to say so now or not at all.”* In the absence of any argument or evidence to the contrary, the Tribunal was invited to conclude that there was no sufficiency of protection.

93. Finally, the solicitors comment on the report for the year 2007 by the US Department of State, which was published on 11th March 2008. This was said to confirm the disastrous state of human rights in Sri Lanka, with gross violations of human rights being perpetrated by both sides. In its summary, the report highlights the oppressive rule of the LTTE in those areas of the North which it controls, while in those areas which it does not control it *“carried out at least one politically motivated killing in Trincomalee, a politically motivated suicide attack in Colombo, a suicide attack against a government army base near Batticaloa, a bombing of civilian shoppers in a suburb of Colombo, and bombings of civilian buses in the south.”*

Comments on procedure

94. It will be apparent from paragraphs 75 to 93 of this determination that a considerable quantity of evidence and submissions has been put before the Tribunal since the hearing of this appeal was completed, quite apart from the matter of the exclusion clauses which had to be deferred until after the hearing. We have already remarked that this is never a desirable state of affairs, and in the instant case there is a strong argument for not admitting the new expert report on AN which was sent in with the submissions on the exclusion of SS, even if the highlighting of further passages in the COIS Report, which was before us all the time, may not be liable to the same objection. On the other hand, the Tribunal itself invited further comments on three other topics, including a country report which had been published after the hearing. We can hardly then object to comments on yet another country report which was published after the hearing. As for the admissibility of Ms Abeysekera’s report,

we have now been invited to consider another document whose admissibility may seem questionable, namely a High Court judgment in a leave application, which in accordance with a Practice Direction of Lord Woolf CJ should not normally be cited in other proceedings.

95. What is to be done with all this material? Apart from the comments which we solicited ourselves, we have not yet given permission for any of it to be adduced. In the circumstances, we do not think it appropriate to admit some of it, and not the rest. To exclude some might give rise to ‘satellite litigation’ and an unnecessary expenditure of time and public money. We are conscious too of Lord Justice Laws’ *desiderandum* in *S & ors* [2002] INLR 416 that country guidance cases should be “*effectively comprehensive*.” But we would not want the procedure adopted in the present case to create any kind of precedent. Country guidance cases take long enough as it is to be written and promulgated. The hearing should normally be the cut-off point. If the Tribunal is bombarded with further evidence and arguments after the hearing but before the determination has been written up, it may be an unconscionably long time before the determination is complete. We hope that this determination has not been delayed over-long.

Risk from the LTTE

96. We shall deal first with the question on which these appeals have been listed with possible country guidance in mind, so as to establish whether the current guidance in *PS*, which was promulgated in October 2004, requires any adjustment. There was no italicized headnote for reported cases in those days, but the central finding of the Immigration Appeal Tribunal in *PS* is encapsulated at paragraph 71 of their determination :

“As we have already observed, those whom 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 as renegades or traitors to the LTTE. Whether it could be successfully argued that even those of so high a profile would not be provided with a sufficiency of protection in Colombo in the *Horvath* sense, may be doubted, but what seems to us quite clear on the background evidence is that 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 who do not reach a similar high profile.”

97. The background evidence which so impressed the panel in *PS* was the list provided by Miss Richards of all the killings which had occurred in the Colombo region between July 2002 and September 2004. Miss Richards has now gone one better by providing a list of all the attacks which took place in Colombo between October 2004 and January 2008, whether or not they resulted in casualties, garnered from the websites of the Sri Lankan press and from the pro-LTTE website, TamilNet. Dr Smith suggests that some Tamil-on-Tamil violence may have gone unreported, but we think that the great majority of incidents of any significance are likely to have found their way into news items which have subsequently been posted on one website or another. Sri Lanka has a flourishing and vociferous press, and any action taken by the LTTE against opponents or defectors is likely to be publicized on TamilNet *pour encourager les autres*, rather than being concealed. Neither Dr Smith nor Professor Good knows of a single item to add to the list, which we regard as effectively comprehensive. It fully bears out Miss Richards’ contention that the LTTE in Colombo are targeting high-profile individuals, such as politicians, as well as the

uniformed services and some civilian infrastructure. No incident is known in which the LTTE have attacked low-level members of the EPDP, although a suicide bomber did try to assassinate the EPDP leader, Douglas Devananda. In July 2004 eight top *aides* of Colonel Karuna were assassinated in Colombo as well as an MP who supported his faction, one 'PLOTE Mohan'. Since then, however, only one incident has been reported in which the LTTE are thought to have got at members of the Karuna group (or TMVP), this being the discovery in March 2007 of five bodies in a swamp. That so much has been made of this discovery (initially, in promoting Mr SS's case) is testament to the dearth of other hard evidence that people like him are at risk.

98. Further solid evidence pointing the other way comes in the form of the report by the Law & Society Trust, in conjunction with other local NGOs, analysing the deaths and disappearances which had been recorded throughout the island between January and August 2007. The statistics for this eight-month period show that eleven people came to a violent end in Colombo, a city of some two and a quarter million souls. That figure does not compare unfavourably with the murder rate for English cities of comparable size. The figure for the 'disappeared' is higher, at 78, but although no one knows for certain who is responsible for the abductions in Colombo, there is general agreement that the LTTE are not carrying out as many as pro-government militias and criminal gangs. On this evidence, the chances of someone who is not regarded by the LTTE as a high-profile enemy actually being abducted or killed by them in Colombo are low indeed. Add to that the heightened security in Colombo since the end of the ceasefire, which Dr Smith acknowledges has reduced the capacity of the LTTE to operate in the capital, and Miss Richards' contention is borne out that the risk there from the Tigers is less now than it was in October 2004, when *PS* was heard and the ceasefire was in full swing.

99. Set against the statistical data, the question whether the Tamil Tigers have an electronic database containing the names of their opponents runs up against the riposte that, even if they do, they are not making use of it to target low-level opponents in Colombo. Mr Mackenzie essayed a stylistic or syntactic analysis of the language in *PS* in an effort to establish that anyone who has given support to the LTTE in the past and has then supported one of the other Tamil groups must be equated to a "*high level opposition activist*". But the expression "*renegades or traitors to the LTTE*", used in paragraph 71 of *PS*, itself implies that those tainted with such opprobrious epithets enjoy a 'high profile', in that their activities are perceived as serious enough to deserve punishment. We have, however, already deprecated too nice a linguistic analysis of this wording. Whether somebody is likely to be regarded by the LTTE as a renegade or traitor deserving punishment will have to be assessed on a case-by-case basis, being careful not to apply the standard of 'the reasonable man' in this country, but at the same time remembering that the Tigers, however ruthless, are by-and-large not crazy. By any standard, a woman who worked as a librarian with a Tamil relief organisation for three months, who was then a development officer doing social work, albeit for a rival organisation, and who now has a young child to look after, is not going to be regarded by the Tigers as deserving of punishment.

100. Thus we do not find that Miss AN is at risk of serious harm from the LTTE in Colombo, even if they know all about her. Sunila Abeysekera confidently asserts that

they will, even if she is not on a computer database, but does not condescend to particulars. The weight to be given to Ms Abeysekera's report must obviously be reduced by its late adduction and the lack of any opportunity to challenge it during the oral hearing before the Tribunal and, in particular, to test it by way of cross-examination. Whilst we attach much more weight to the evidence of Dr Smith and Professor Good, we think it significant that the latter has no evidence of his own as to how the Tigers in Colombo might know about AN's history, while the former relies on what he has been told by a former intelligence officer and on an inference which he draws from the existence of an electronic database of those who contribute to the LTTE's finances. That is the only identified basis of Dr Smith's opinion that, in addition to a database for fund-raising purposes, the Tigers are likely to have a database of their opponents, against which they can check the names of newcomers to the lodges in Colombo. On this key matter, while we acknowledge the expertise of both Dr Smith and Professor Good, and give weight to their opinions, we think we are justified, on the evidence before us, in taking a different view from theirs.

101. In his submissions, Mr Mackenzie emphasized the ruthless efficiency of the Tigers and the fact that for years they have controlled and administered much of the island, which implies that they possess, and make use of, an electronic database. We have now had our attention drawn to the fact that last year the LTTE started issuing identity cards to the inhabitants of the areas which they control, which certainly implies the existence of a database of records. Why should they not have built up a database of their opponents? Mr Mackenzie has also urged us to hold in high regard the carefully-considered opinion of an expert, who is sure that such a database exists, and not to require that opinion to be backed up by 'hard' evidence in order to be given weight.

102. There are, we think, two problems with this argument. First, it is very tempting – and one does not need to be an expert – to reason along the following lines : “We know (i) that the LTTE keep a database of supporters for fund-raising purposes, and (ii) that they have started issuing ID cards, which also requires a database. It would (iii) be in their interest to keep a database of their opponents. *Ergo* (iv) they must have one.” Such a contention, however, rests on an unproven generalisation about how people in far-off lands with very different cultures are likely to behave. Secondly, while we do not disagree with the proposition that an expert is entitled to form an opinion based on his experience and expertise, without necessarily having a panoply of 'objective' facts to back up that opinion, we think that the weight to be given to the opinion even of a distinguished expert will diminish in inverse proportion to the amount of observable facts which he can marshal in support of his opinion. Lord Justice Sedley's analysis in *FK (Kenya)* was not, in our view, intended to give approval to experts not sourcing their reports, but to warn against disregarding the expertise of a report's author when assessing the value of his report. In the instant case, Dr Smith has only the word of an informant to add to the inference he draws from the fact that the LTTE already have a database for other purposes. We do not know who that informant was, or how he came by that information, or whether it is reliable. We do, of course, appreciate that Dr Smith must preserve the confidentiality of his sources when they have requested it. But against this information emanating from a former Sri Lankan intelligence officer we must set the dearth of evidence that opponents of the LTTE have been targeted in Colombo (or anywhere else) because they came up positive when checked against a database of the LTTE's opponents.

103. Miss Richards says that Dr Smith has been speculating, while Mr Mackenzie says that he has legitimately been exercising his expert judgment. We have to say that the evidence before us simply does not establish that an electronic database of the LTTE's opponents exists. So we do not have to take the next step and consider whether Miss AN is likely to be on it. But if we had to do so, we would not think it likely that the social work which the appellant did under the aegis of the EPDP in Jaffna has earned her a place in the catalogue of the LTTE's enemies.

104. For the reasons we have already given, we do not think it reasonably likely that Miss AN will come to the adverse attention of the LTTE in Colombo. People like Miss AN, whose past involvement with the LTTE and with other Tamil groups is not such as to excite the wrath of the LTTE in Colombo, are not at real risk of persecution by the LTTE in Colombo, so the question of whether the government offers a sufficiency of protection against the LTTE does not arise in such cases. Miss Richards has not actually sought to argue, in the present case, that there is a sufficiency of protection in Colombo, but wishes to reserve the Secretary of State's position for future cases. Birnberg Peirce & Partners have protested vigorously against this stance, and it does seem to us that one can reasonably draw the inference, from the absence of any contention that there is a sufficiency of protection, that the Secretary of State accepts that those whom the LTTE are determined to eliminate cannot look to the government for a reasonable degree of protection. But that is not this case.

Risk from the Sri Lankan authorities

105. Although country guidance has not been sought regarding this aspect of the appeal, we need also to address the issue of the risk to returnees from the authorities. We have been asked in particular to give our view on whether the second of the risk factors identified in *LP* applies to Miss AN, namely whether she has a "*previous record as a suspected or actual LTTE member or supporter.*" Much energy was initially expended on the question whether the CID at the airport have computers or not, but as Professor Good observed, even if the CID do not, the Immigration Service certainly does, and when incoming passengers are being checked, a 'Stop List' and a 'Watch List' on the computer will alert the immigration officer to anyone in whom the CID would have an interest. The Tribunal in *LP* accepted that this is so, and found that the appellant in that case would be on the computer record because he had been formally brought before a court and had been granted bail before absconding. He therefore came within the fourth of the risk categories, namely "*bail jumping.*" We note also that the head of the CID told a Home Office mission in 2002 that photographs of wanted persons were not available at the airport, but that their names were on the computer.

106. The background evidence clearly supports the existence of a centralized national database accessible by the security services. The National Intelligence Bureau is said to have records going back ten years or even longer, and to have had a central database since 2004. Although there is a lack of computer facilities in the north of the island, paper records are sent south and are transferred onto the computer database. The question for us then is not whether, as in the case of the LTTE, the database exists at all, but who would be on the database. In his oral evidence, Professor Good did not venture to surmise who was likely to be stopped at the airport, save those for

whom an arrest warrant has been issued, although in his written report he expressed the view that the authorities have every incentive to maintain official records of suspects who have been arrested, even if they have subsequently been released without charge. Dr Smith was less cautious, asserting that the central database contains the names of all those who have ever been detained and subsequently released as “*unacquitted suspects.*”

107. We think that Dr Smith has allowed himself, as he did with the LTTE database, to slip from the idea that it would be useful to have certain information on a database to a prediction that the information must be on a database. We think it intrinsically unlikely that everyone who has ever been detained by the authorities in the course of the Sri Lankan conflict, or at least in the last 10-15 years, is now on a computer database which is checked by the Immigration Service when failed asylum seekers arrive at the airport, and is checked by the police or army when people are picked up at road-blocks or in cordon-and-search operations. The evidence suggests, on the contrary, that the database is far narrower than that. When Tamils are picked up in Colombo the authorities want to know why they have come and what they are doing, if they are not long-term residents of the city. There are no reports of people being detained and perhaps sent to Boossa camp at Galle because they were once held for questioning in Jaffna or Batticaloa years before. As for arrivals at Bandaranaike International Airport, the ‘Watch List’ and the ‘Stop List’ clearly contain the names of people who are ‘seriously’ wanted (to use a phrase of Mr Justice Collins) by the authorities. Equally clearly, the evidence does not indicate that they contain the names of everyone who has ever been questioned about possible knowledge of, or involvement in, the LTTE. The majority of Sri Lankan asylum seekers coming to this country claim to have been detained at some time by the authorities, but there are no reports of any being detained at the airport on return because they were once held for questioning years ago and then released.

108. In Miss AN’s case, we regard it as highly unlikely that the record of her detention in 1998 is on a database which may be consulted by the authorities in Colombo, should they ever have cause to question her, and will reveal her as an LTTE suspect. The authorities in the north of the island took no further interest in her after she was released in August 1998, and indeed she went on to work for several years for an organisation which is on the government side. Dr Smith surmises that the EPDP is too disorganized to have passed on to the Sri Lankan authorities the information that Miss AN was working for them. But he also surmises that another pro-government organisation, the TMVP, has passed on to the authorities the fact that their member, Mr SS, was detained by the LTTE and may have disclosed information about the Karuna group. It is not clear to us that there is any sustainable basis for supposing that one organisation would, while the other would not, pass on relevant information to the authorities. Once again, we fear Dr Smith is going beyond his expertise and simply speculating.

109. We can therefore discount the second of the twelve risk factors listed in *LP*, namely previous record as an LTTE suspect. At this point we would respectfully endorse the distinction made in the recent judgement of Collins J, who as President of the Immigration Appeal Tribunal gained considerable experience of Sri Lankan cases, between the risk factors properly so called, one or more of which may be enough to cause a returnee to be detained and ill-treated, and the ‘background factors’ which do

not themselves, singly or cumulatively, give rise to such a risk, but which may increase the risk when one of the ‘risk factors’ *per se* is present. Apart from previous record as an LTTE suspect, the latter comprise a criminal record or outstanding arrest warrant, having jumped bail or escaped from custody, having signed a confession or having been asked to become an informer, and having relatives in the LTTE. None of those factors impinges upon Miss AN.

110. All of the ‘background factors’ are, on the other hand, present in AN’s case. But as we have observed, even all of them together do not give rise, without one of the risk factors *per se*, to a reasonable likelihood of detention and ill-treatment by the authorities. To take an example of one of these factors, we note that Sunila Abeyssekera, after many years as a pro-Tamil activist in Colombo, has only brought up one instance within her personal knowledge of a Tamil being detained because of scarring (this was at a police station rather than at the airport), and we may infer from the absence of any mention of ill-treatment that the detainee was released unharmed. To take another example, Dr Smith postulated that AN would be detained at the airport simply because she was arriving from London, but when asked if he knew of any passengers having been detained in this way, he did not. All he could say was that, if he were a Sri Lankan immigration officer, he would be suspicious of passengers returning from London.

111. The one background factor which comes with a *caveat* is (x) “*lack of ID card.*” Mr Justice Collins adds the qualification, “*unless it goes beyond the period in which the individual might be expected to obtain an ID card after return*”, while the Tribunal in *LP* has this to say at paragraph 240 about Tamils who are found – at a checkpoint, during a cordon-and-search operation or when their lodge is raided – to have no identity document :

“If the appellant asserts that he would be at risk for that reason, then he or she will need to show why it is he or she cannot obtain an identity document within a reasonable time of returning to Sri Lanka. They would not be expected to carry an identity card at the airport if they are being returned on temporary documentation obtained in the United Kingdom. For a short time, while new documents are obtained, a returnee should be able to establish the fact of his recent return, with little difficulty.”

112. What has to be done in order to procure a new National Identity Card in Colombo? The evidence is conflicting, but the item most recently brought to our attention indicates that the Department for the Registration of Persons will issue one to an applicant who produces a birth certificate, even a photocopied one. Registration of births has long been routine in Sri Lanka, unlike other parts of South Asia, and if one’s birth has been registered, one should be able to obtain a copy of one’s birth certificate in Colombo. If there is no record of one’s birth, then one has to ask the headman of one’s native village to confirm one’s identity, although there is the alternative of bribing an employee at the Registry to issue an ‘official’ birth certificate, or of buying a forged certificate. If all else fails, the UNHCR will issue an identity document.

113. It is likely that Miss AN can get a copy of her birth certificate in Colombo, rather than having somehow to make her way to Jaffna and present herself to the *grama seveka*. We also think it likely, as Miss Richards suggests, that she can either

get her old ID card back, or at least get the information which appears on it, such as the serial number, so as to facilitate the issue of a new one. The appellant is not likely to be without an identity document in Colombo for so long after arriving from the UK as to arouse suspicion.

114. Sunila Abeysekera highlights the recent use of females by the LTTE as suicide bombers, but we do not think we are applying the standards of ‘reasonableness’ in the country of adjudication when we say that a mother with a 2-year old baby is far less likely to be regarded as a potential suicide bomber than a woman who is without dependants. Indeed, the fact that the appellant is a single mother with a child will greatly reduce any suspicion which may fall upon her as a Tamil originating from the north of the island. We should say at this point that the evidence does not support Mr Mackenzie’s submission that having one’s origin in the north or east of the island should be added to the list in *LP* as a risk factor, or even as a separate ‘background factor’.

Internal relocation to Colombo

115. For a Tamil living in Colombo, there is undoubtedly the prospect of being stopped and questioned by the security forces or the police, and some of those who get stopped are detained for further questioning. But the evidence shows that the great majority are released within a short time. A good example comes from an official at the Centre for Human Rights and Development, who relates how, after an LTTE bombing in Colombo, some 1,500 persons were arrested at street checkpoints, but most were released after two or three days. Of the rest, about 103 were sent to Boossa detention centre, and a few more were held at the Terrorist Investigation Department (‘TID’) in Colombo. But most of those were then released through the intervention of the Supreme Court. Indeed, the judicial activism of the Supreme Court has done much to mitigate the harshness of the tight security regime. In June 2007 the expulsion of Tamils from their lodges was declared illegal, and those expelled were brought back at state expense. In December 2007 the permanent checkpoints were declared illegal, although the authorities got round that by setting up “mobile” checkpoints. In January this year, the security forces were told they could not disturb people’s residences between 9 p.m. and 6 a.m.

116. The official mentioned above put the current number of detainees at Boossa and the TID at around 550, which Mr Mackenzie thinks is too high for them all to be “serious” suspects rather than the unfortunate victims of discrimination and harassment. But with a Tamil population in Colombo of a quarter of a million, we do not think this number of detainees represents a real risk to Miss AN of prolonged detention. Nor is she at real risk of ‘disappearance’ or abduction. The great majority of the victims are young men, and the numbers involved (78 in the eight months between January and August 2007) are not so great as to make abduction a real risk for Tamils in Colombo generally.

117. Much has been made of the undue harshness which AN will face as a single mother without accommodation or employment and without friends or family to turn to in Colombo, but this is to leave out of account what even Dr Smith acknowledges to be the very generous support package offered by the IOM to voluntary returnees. After “*smoothing the re-entry process*” the IOM provides “*a comprehensive package of support for five years after arrival*”, which includes “*five years shelter*

guaranteed.” We do not think it is open to the appellant to say that, if she loses her appeal, she will not take advantage of this package, and to argue from that refusal that she will face destitution in Colombo which, accordingly, is not a place to which she can reasonably be expected to relocate.

118. We note the concern of IOM that some of those returned involuntarily may have got into trouble through not having ID cards, and that even being enrolled on the IOM’s reintegration programme is not a guarantee of immunity from trouble, as evidenced by the young man from that programme who was picked up at a checkpoint and detained for a month. But we reiterate that, as most detainees are released after a short time, there is not a real risk to Tamils in Colombo, even young Tamil men, of detention leading to ill-treatment.

119. As well as the accommodation and maintenance available from the IOM, the appellant is likely to get a sympathetic reception from the EPDP to any request for help. After all, she worked for them for six years, and they were concerned enough about her safety to move her, first to Vavuniya, then to Mankulam, and finally out of the country. Her uncle in Canada actually paid for that final journey, and is someone to whom she may look for financial support for her sojourn in Colombo. The EPDP clearly had no objection to the appellant “living in sin” with another of their operatives in Jaffna, and it seems that the couple would have had a baby together, if her partner had lived. That the appellant was prepared to do this shows that the stigma of unmarried motherhood is not so great in Sri Lanka as to make life intolerable.

120. Having found that the material needs of Miss AN and her child will be taken care of in Colombo, we turn finally to her mental state. This, we find, is not nearly as bad as has been submitted on her behalf. Despite her horrific experience in 1998, she has clearly been able to cope with life since then. Until the beginning of 2005 she had a job and a boyfriend, and was hoping to have his baby. Shortly after coming to this country she formed a sexual relationship with another man, and is now looking after his child, whom he comes to see on a regular basis. There has been no suggestion that the appellant is unable to care properly for her child. She has apparently not needed, and has certainly not obtained, psychiatric treatment. She has twice been for a consultation with a psychiatrist, the first lasting for three hours in July 2005, the second lasting for one-and-a-half hours in January 2008. Both consultations were arranged so that a report could be written for a forthcoming appeal. Apart from that, the appellant has been on anti-depressant medication (something which a vast number of people in this country are prescribed), and last year had some counselling sessions. We have not heard from the person who conducted those sessions. The evidence does not actually show that the appellant is likely to need access to psychiatric services in Colombo, whereas psychotropic medication is freely available – and indeed free.

121. Dr Harrison predicts that the appellant will be unable to render an account of herself if she is detained in Colombo, but we simply do not accept that after a consultation lasting an hour and a half, carried on through an interpreter, such a prediction can be relied on. The very fact that the appellant will be looking after a young child is likely to reduce any suspicion which she might attract as a newcomer to Colombo, and she will have the IOM to monitor her and provide assistance. Her mental state is not such that, whatever her present fears of return, she will be unable

to make a realistic assessment of the situation on the ground when she gets to Colombo. Indeed, her mental condition is a million miles from that of Mr SS, whose psychosis is so severe that he cannot function at all in society. He certainly would not be able to render an account of himself if stopped at a checkpoint. But that is not a real risk for Miss AN.

Summary of general conclusions

122. It will be useful here to set out in summary form the conclusions which we have reached on the general issues raised in the course of these proceedings. We give these under three headings.

RISK IN COLOMBO FROM THE TAMIL TIGERS

- (a) Although *PS* (LTTE – internal flight – sufficiency of protection) CG [2004] UKIAT 297 is now out of date in respect of the background evidence upon which it relied, we make the same general assessment of the risk from the LTTE to failed asylum seekers in Colombo, namely that there is no real risk to those who are not “*high profile opposition activists, or those whom they would see as renegades or traitors to the LTTE.*”
- (b) The background evidence indicates that, with tighter security in Colombo since the breakdown of the ceasefire, the operating capacity of the LTTE has been restricted, and they are concentrating their attacks upon individuals with a high political or military profile, as well as upon members of the security forces generally and upon military installations, and to some extent upon civilian infrastructure.
- (c) There is scarcely any evidence that low-level opponents of the LTTE or low-level supporters who have left their ranks have been targeted in Colombo since October 2004.
- (d) There is no solid evidence that the LTTE maintain a computerized database of opponents and defectors, against which a check may be run when a person comes to their notice.

RISK IN COLOMBO FROM THE SECURITY FORCES

- (e) The country guidance in *LP* (*LTTE area – Tamils – Colombo – risk?*) CG [2007] UKAIT 76 remains valid, and we would endorse the suggestion made by Collins J that the twelve ‘risk factors’ listed at paragraph 238 of that determination may usefully be divided into risk factors *per se* and ‘background factors’ which do not in themselves create a real risk to failed asylum seekers in Colombo, but which may exacerbate the situation when they combine with risk factors *per se*.
- (f) The National Intelligence Bureau in Sri Lanka maintains a computerized database of persons who are thought to 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 List' or 'Stop List'. The CID at the airport will be alerted when this happens. But there is no firm evidence to support the contention that everyone who has ever been detained by the police or army is likely to be on the database.

- (g) Failed asylum seekers who arrive in Colombo without a National Identity Card should be able to get a new one on production of a birth certificate, which is usually easy to obtain. If an NIC cannot be issued, the UNHCR will issue a substitute which is generally acceptable. Those newly arrived in Colombo who do not yet have an ID card should, if questioned about their ID, be able to establish that they have recently come from abroad.
- (h) Roadside checkpoints, cordon-and-search operations 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 fairly short time, and the Supreme Court has intervened to curb the excesses of the security forces.
- (i) Abductions and kidnappings have been carried out by a variety of groups, mostly pro-government militias and criminal gangs, but the scale of these disappearances does not create a real risk to failed asylum seekers arriving in Colombo.

INTERNAL RELOCATION TO COLOMBO

- (j) For a person at risk in his home area but not, in accordance with (a)-(i), at risk in Colombo, relocation to the capital will not in general be unduly harsh. Young Tamil men are particularly likely to be stopped at checkpoints or rounded up in cordon-and-search operations or in raids upon 'lodges', but most detainees are released within a fairly short time. Abductions and kidnappings 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.
- (k) Failed asylum seekers with no relatives or friends to turn to in Colombo may be expected to avail themselves of the assistance afforded by the International Organisation for Migration, which provides accommodation and the necessities of life for voluntary returnees. Other NGOs also offer support, particularly to women.
- (l) For returnees with mental health problems, psychotropic medication is freely available in Colombo, which also has the bulk of the 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.

Conclusion in these appeals

123. Having found that internal relocation to Colombo would be neither unsafe nor unduly harsh for Miss AN, we can briefly add that removal will not contravene her human rights. She has not put forward family life with the father of her child as a barrier to removal, or sought to argue that her private life in the United Kingdom is of such a quality as to engage the operation of Article 8. She and her child can, on the other hand, live in safety and without undue harshness in Colombo. Mr SS, of course, cannot be removed to Sri Lanka without breach of his human rights, but is excluded from the Refugee Convention and from humanitarian protection.

DECISION

The appeal of AN is dismissed on asylum, humanitarian protection and human rights grounds.

The appeal of SS is dismissed on asylum and humanitarian protection grounds, but is allowed on human rights grounds.

Richard McKee

10th June 2008