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12<sup>th</sup> March 2012

## A commentary on the December 2011 Sri Lanka Operational Guidance Note

This commentary identifies what the 'Still Human Still Here' coalition considers to be the main inconsistencies and omissions between the currently available country of origin information (COI) and case law on Sri Lanka and the conclusions reached in the December 2011 Sri Lanka OGN. Where we believe inconsistencies have been identified, the relevant section of the OGN is highlighted in blue.

An index of full sources of the COI referred to in this commentary is also provided at the end of the document.

**This commentary is a guide for legal practitioners and decision-makers in respect of the relevant COI, by reference to the sections of the Operational Guidance Note on Sri Lanka issued in December 2011. To access the complete OGN on Sri Lanka go to:**

**<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylum/policyogns/>**

**The document should be used as a tool to help to identify relevant COI and the COI referred to can be considered by decision makers in assessing asylum applications and appeals. This document should not be submitted as evidence to the UK Border Agency, the Tribunal or other decision makers in asylum applications or appeals. However, legal representatives are welcome to submit the COI referred to in this document to decision makers (including judges) to help in the accurate determination of an asylum claim or appeal.**

**The COI provided in this commentary is not exhaustive and should always be complemented by case-specific COI research.**

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### 3.6 Fear of persecution by the Sri Lankan authorities

#### Tamil ethnicity

##### Excerpt from the December 2011 OGN

##### Tamil ethnicity

3.6.3 Throughout the conflict, minorities suffered disproportionately – including at the hands of the now defeated Liberation Tigers of Tamil Eelam. The political rights of minorities, a key driver of the conflict, continued to be restricted in 2010. Tamil representatives continued to report discrimination from the government and security forces. Tamil civilians in Colombo were asked to register their presence with their local police station in July [2010], and throughout 2010 arrests under the Emergency Regulations and Prevention of Terrorism Act primarily affected Tamils.<sup>11</sup>

3.6.4 Both local and Indian-origin Tamils maintained that they suffered long-standing, systematic discrimination in university education, government employment, and other matters controlled by the government. According to the SLHRC [Sri Lanka Human Rights Commission], Tamils also experienced discrimination in housing. Landlords were required to register any Tamil tenants and to report their presence to the police, although in practice many landlords did not comply. Tamils throughout the country, but especially in the conflict-affected north and east, reported frequent harassment of young and middle-age Tamil men by security forces and paramilitary groups<sup>12</sup>

This is the only COI included in this section that deals with the treatment of Tamils. It is considered that these excerpts fail to document the range of abuses that Tamils experience as is reported in the public domain. Given that the COI in paragraph 3.6.3 dates from 2010, it could be read to imply that such discrimination against Tamils no longer occurs. Issues of particular relevance not included in this section are the on-going disproportionate impact of the 'Emergency Regulations' on persons of Tamil ethnicity, especially those perceived to support the LTTE, harassment and beatings committed by the security forces and attempts to forcibly relocate Tamil communities. The following COI which addresses these issues is particularly relevant given that the conclusion of this section of the OGN (see below) relies heavily on the findings of [TK \(Tamils – LP updated\) Sri Lanka CG \[2009\] UKAIT 00049](#) which was promulgated back in December 2009:

- [TamilNet, Occupying SL Army, Police jointly attack Tamil youth in Vanni, 14/02/2012](#)  
[...] Sri Lanka's occupying Sinhala army and police brutally attacked a number of Tamil youth below the age of 25, who were passing by the road in Nedung-kea'ni in Mullaitheevu district on Tuesday night. The unprovoked and random attack followed some complaints of Sinhala road workers from the South, news sources in Vanni told TamilNet. Sometimes back a similar attack took place in Vanni after a confrontation between some Sinhala visitors from the South and the local people. Such attacks by the colonial forces were to remind the Eezham Tamils in Vanni of their subjugated status, the sources further said. [...]
- [TamilNet, Sinhala gang attacks Tamil residents in Trinco suburb. 29/01/2012](#)  
[...] Four Tamil residents of Vinaayagapuram, a suburb in Trincomalee town, were injured, including one with severe injuries, when a gang of Sinhalese attacked them on Saturday evening around 6 p.m, sources in Trincomalee said. Thurainayagam Sanjeevan, 32, an employee of the Trincomalee office of a leading Tamil daily Virakesari, is in critical condition and has been admitted to the Trincomalee General Hospital. Other injured Tamils were discharged from the hospital after treatment, hospital sources said. The attackers had threatened the Tamil residents to vacate the village, according to the injured residents. [...]
- [TamilNet, Colombo backed Muslim group threatens Tamils to leave their lands in Batticaloa, 25/01/2012](#)  
[...] A gang of Tamil-speaking Muslim persons with the backing of government politicians has been engaged in a campaign of threat against Tamil families of Upcountry origin residing in U'rukaamam in Kiththu'l area in the Ea'raavor Chengkaladi DS division to leave their place and seek residence elsewhere. U'rukaamam-Kiththu'l area is located along Chengkaladi-Badulla highway (A-15). The villagers are of

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upcountry Tamil origin who fled from their area in the SL state-sponsored anti Tamil pogrom of 1957 and had settled in U'rukaamam-Kiththu'l area after clearing the forest. The villagers were also affected in 1983 anti Tamil 'Black-July' pogrom. [...]

- [TamilNet,Colombo-backed gang threatens resettled Tamil families in Mannaar, 24/01/2012](#)  
[...] A gang of more than one hundred fifty Sinhalese who were brought to Channaar village in Mannaar district on Sunday by a government minister had threatened resettled Tamil families to leave the village immediately to give room for the majority community. The intimidation of Tamil families who have suffered in the conflict and relatives of the killed LTTE cadres had been engineered by Minister Rischard Bathiudeen and Maanthal West Divisional Secretary with the blessing of the Colombo government, according to reports emerging from the area.  
The Sinhala gang had then started clearing the jungle area in Channaar with heavy equipment including bulldozers and ordered the residents to leave the village immediately, sources said. [...]
- [Human Rights Watch, World Report 2012, 22/01/2012](#)  
[...] Despite the end of the formal state of emergency, the government also continues to hold several thousand people initially detained under the emergency regulations. Many have been held for years without trial, in violation of international law. The government has so far refused to even publish lists of those detained.  
The government has gradually released many, but not all, of the more than 11,000 suspected LTTE members detained at the end of the war and sent to so-called rehabilitation centers. The government denied detainees important due process guarantees, such as access to legal counsel, and thousands spent two years or more in detention. There are reports that some people released from the rehabilitation centers were harassed by security forces after they returned home. [...]
- [TamilNet,Tension prevails as SLA terrorizes Tamils confronting Sinhala thugs in Vanni, 07/12/2011](#)  
[...] Scores of Tamils, including women and children, were injured and terrorized by the occupying Sinhala army at Ira'naimadu junction in Ki'linochchi on Tuesday night between 8:00 and 10:30 p.m., following 4 Sinhala thugs were confronted by the local people. Four Sinhala men from South who came to a Tamil shop at Ira'naimadu junction on Tuesday night threatened the shopkeeper and attacked him. When the people of the locality retaliated, the Sinhala men escaped into an SL military camp. Around 30 Sinhala soldiers who came in support of the thugs indiscriminately attacked the people of the locality and all people passing by the junction. The attack continued for nearly two hours. [...]
- [TamilNet,, Sinhalese forcibly take over paddy lands of Tamils in Thennaimaravadi, 06/11/2011](#)  
[...] Some resettled Tamil farmers in Thennaimaravadi village were taken aback in the weekend to see their paddy lands they prepared for sowing for the forthcoming Maha cultivation had been sown by Sinhalese encroachers at the instance of the Sri Lanka Army stationed in the area. They fear this is a part of a covert plan by Colombo government to forcibly take over paddy lands in the traditional Tamil village Thennaimaravadi, located at the narrow boundary between Mullaiththeevu and Trincomalee districts that links the Northern and Eastern territories of the country of Eezham Tamils. [...]
- [Chatham House, Charu Lata Hogg Sri Lanka: Prospects for Reform and Reconciliation, October 2011](#)  
[...] CENTRALIZATION, MILITARIZATION AND DEVELOPMENT  
Since the defeat of the LTTE in May 2009, the government has gradually increased the presence of troops in the north and east. This appears to be a strategy to suppress militancy, and stems from a deep-seated distrust of communities there. In the north in particular, the military monitors civilians, decides policies and controls many aspects of peoples' lives. Community workers report that the level of military scrutiny in northern Sri Lanka is so high that civilians have to seek permission even to hold religious or other personal gatherings. In some instances, rights activists in the north-east say the military is known to attend private functions and take pictures of people attending in order to gather intelligence.

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The military's increasing control of administrative decisions in the north and east, including distribution and use of land, has turned the issue of land ownership into a deeply politicized and ethnically-charged one. Administrative and developmental decisions in north-east Sri Lanka are frequently taken by the military in consultation with the Presidential Task Force for Resettlement, Development and Security (PTF) and the military is involved in various committees set up in a September 2011 government policy regarding land in the northeast. Furthermore, the military continues to impose restrictions on humanitarian, developmental and psychiatric social work, accentuating existing resentments and impeding quick recovery. The presence of large numbers of army personnel, particularly in the north, has increased the vulnerability of women to violence and other forms of abuse. Women without male companions or carers are particularly vulnerable. However, what continues to remain a deeply emotional issue for many Tamil women and men is that despite the large-scale army presence, the government has failed to release the names of the thousands of Tamils detained in various sites across the country. While the number of those detained in the period immediately following the end of the conflict remains unknown, information provided by the government to the UN panel of experts suggests that, as of February 2011, around 5,800 had been released, some 4,500 were detained in rehabilitation centres and another 1,300 were detained elsewhere for possible prosecution. [...]

In August 2011, it repealed the Emergency Regulations, which have been enforced intermittently over nearly two decades. However, the Prevention of Terrorism Act (PTA) continues to remain a tool for largescale rights violations against Tamils. Under this anti-terror legislation Tamil men and women continue to be arbitrarily arrested, while an unspecified number remain in custody in detention centres to which the International Red Cross and domestic human rights organizations have no access. [...]

- [TamilNet, SL military collects details on ex-LTTE members in Jaffna, Vanni, 06/10/2011](#)  
[...] Occupying Sri Lanka Army soldiers in Jaffna and Vanni have again started collecting details of former LTTE members. The SLA, using new forms from Colombo, is registering details of ex-Tiger members who had left the movement several years ago and of those who were detained and released by the SLA after the genocidal onslaught on Vanni in 2009. The SLA has been registering the details of former LTTE members since it seized the control of Jaffna peninsula from the Tigers in 1996. The SL military also registered the details of the LTTE members whom it took into its custody in 2009. The SLA is now collecting data on the whereabouts and details on what the former LTTE members are doing now. Even the identities of the dead ones are being verified, sources in Jaffna said. [...]  
Former LTTE-members say they are being kept under continuous surveillance and being harassed by the SLA and are being indirectly forced to vacate their soil. [...]
- [Research Directorate, Immigration and Refugee Board of Canada Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport, 22/08/2011](#)  
[...] According to the Law and Society Trust-led joint submission, some of the challenges faced by returnees, other than at the airport during re-entry, include difficulties finding accommodation, employment, family, and documentation (Law and Society Trust et al. 18 July 2011, 6). The report notes that if the returnees do not obtain a National Identity Card (NIC), "they could face re-arrest, detention and torture" (ibid.). There are also no programs or policies in place to help returnees reintegrate into society, leaving them "vulnerable to abduction and extortion by armed groups" (ibid.). Returnees are also viewed with "suspicion," and are generally seen as "'traitors,' 'those who brought the country to disrepute' [and] '... lied about the situation in the country abroad'" (ibid., 6-7). They also face "systematic media attacks" that characterize "the Tamil diaspora community as being LTTE mouthpieces and supporters" (ibid., 7). [...]
- [Research Directorate, Immigration and Refugee Board of Canada, Registration requirements in Colombo for Tamil and Sinhalese citizens who migrate from Jaffna or other regions of the country \[LKA103816.E\], 22/08/2011](#)  
[...] Registration since the end of the war  
[...] The Law and Society Trust-led joint submission notes that

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[t]here is no legal requirement that any 'outsider' in Colombo and other cities should register with the local Police, since the May 2010 relaxation of Emergency Regulations. However, Police still do inquire into registration from Tamils and subject them to extra scrutiny if they do not have the documents with them. (Law and Society Trust et al. 18 July 2011, 4)

The Canadian High Commission official indicated that registration is "at the discretion of District Police Commanders" who decide whether people need to register (Canada 16 Aug. 2011). He added that "[o]n occasion, police will canvass areas and confirm whether a household has registered its occupants ... on an ad hoc basis" (ibid.). According to the official, some companies register "transient" employees that are working on "longer term projects"; landlords and people "employing domestic help" also tend to register their tenants "as a matter of course" (ibid.). The official also noted that "if people have not registered, they could be taken to a local police station and a check may be done to ensure they have no outstanding wants or warrants" (ibid.).

When asked whether there are any circumstances under which a citizen would not be permitted to live in Colombo, the official stated that there are no restrictions on movement in Colombo (ibid.). [...]

➤ [International Crisis Group, Reconciliation in Sri Lanka: Harder Than Ever, 18/07/2011](#)

[...] B. TAMILS

[...] The government's policies and Tamil suspicions are also increasing the vulnerability of certain members of the Tamil community, especially former or suspected LTTE cadres. Many of those caught up in the government's "rehabilitation" camps were not hardcore fighters. Some were forcibly recruited in the final days of the war; others had lived under Tiger rule for decades and had to cooperate with their orders to survive. Nonetheless, when detainees are released and returned to their communities, they are treated with suspicion. Some are more deserving than others of this reaction – those who helped to abduct children are often on the receiving end of mothers' anger. But those forcibly recruited have little to atone for. Still, when they are visited by the military and intelligence agents it creates problems, especially for women, who are vulnerable to sexual abuse, but also for their families and villages. "Society sees these people as those who brought bad things on the community", said a priest in the north. The resulting ostracism is dangerous. But instead of trying to build trust between people who have been associated with the LTTE (rightly or wrongly) and those who have not, the government is undermining those relationships. This is true of the military's widespread use of former detainees as informants, but also of the government's development policy. The PTF has an implicit policy of giving preference to people not associated with the LTTE. A government official told an international aid worker in the north: "If I have a widow of an LTTE cadre and a widow who is clearly just Tamil, I'll pick the latter". This approach will only increase levels of distrust that already are high. [...]

➤ [US Department of State, Sri Lanka Country Report on Human Rights Practices 2010, 08/04/2011](#)

[...] d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons  
The law grants every citizen "freedom of movement and of choosing his residence" and "freedom to return to the country." In practice, however, the government restricted this right on multiple occasions. The additional police and military checkpoints on travelers from the north and the east and on movement to and in Colombo remained in effect. The number of formal, stationary checkpoints declined from the previous year, in particular in Colombo. Many observers noted an increase in temporary, roving checkpoints, however, especially at night in Colombo.

Ethnic Tamils' national identification cards were the only cards printed in both Sinhala and Tamil.

Security forces at army checkpoints in Colombo frequently harassed Tamils. Both the government and the TMVP continued to operate checkpoints in the east that impeded the free movement of residents, especially Tamils. [...]

Limited access continued near military bases and the HSZs where civilians could not enter. The HSZs extended in an approximately 2.5-mile radius from the fences of most military camps. Some observers claimed that the HSZs were excessive and unfairly affected Tamil agricultural lands, particularly in Jaffna. There were allegations after the war ended that the government was allowing non-Tamil businesses to locate inside HSZs, taking over valuable land before local citizens were allowed to return. [...]

e. Denial of Fair Public Trial [...]

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The law requires court proceedings and other legislation to be available in English, Sinhala, and Tamil. In practice most courts outside of Jaffna and the northern parts of the country conducted business in English or Sinhala. A shortage of court-appointed interpreters restricted the ability of Tamil-speaking defendants to receive a fair hearing in many locations, but trials and hearings in the north were in Tamil and English. Few legal textbooks existed in Tamil. [...]

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law provides for the right to privacy; however, the government infringed on these rights, particularly when conducting cordon and search operations in Tamil neighborhoods. The Emergency Regulations allowed security forces to conduct searches of property and to engage in wiretapping and surveillance of private citizens with little judicial oversight. [...]

National/Racial/Ethnic Minorities

Both local and Indian-origin Tamils maintained that they suffered long-standing, systematic discrimination in university education, government employment, and other matters controlled by the government. According to the SLHRC, Tamils also experienced discrimination in housing. Landlords were required to register any Tamil tenants and to report their presence to the police, although in practice many landlords did not comply.

Tamils throughout the country, but especially in the conflict-affected north and east, reported frequent harassment of young and middle-age Tamil men by security forces and paramilitary groups. [...]

*Torture/ ill-treatment*

It is a welcome development that this new section is included in the OGN. However, as discussed [below](#), it is considered that the COI included in this section is not adequately addressed in the *Conclusion* for this main category of claim.

*Commission on Lessons Learnt & Reconciliation*

Excerpt from the December 2011 OGN

3.6.24 The LLRC's timeframe has been extended twice. In mid-May 2011, when the commission was due to submit its final report to the President, Sri Lankan media reports indicated that the LLRC would seek a six month extension and that President Rajapaksa was prepared to grant it. The Commissioners are now scheduled to deliver a final report to the President by November 2011, buying Sri Lanka more time to negotiate away calls for an international investigation into alleged war crimes committed by both sides during the last phase of Sri Lanka's armed conflict in 2009.

All of the COI included in this section is unreferenced. It is clear, however, that it is outdated as the Commission on Lessons Learnt & Reconciliation has now published its final report, in December 2011. The OGN also fails to refer to the findings from the Report of the UN Secretary General of his Panel of Experts on Accountability in Sri Lanka:

➤ [Human Rights Watch, Sri Lanka: Army Inquiry a Delaying Tactic, 15/02/2012](#)

[...] The Sri Lankan army's announcement that it had appointed a five-member court of inquiry to investigate allegations that its forces committed serious violations of the laws of war appears to be another government delaying tactic in the face of mounting international pressure, Human Rights Watch said today.

The United Nations Human Rights Council in Geneva is expected to discuss at its next session a resolution on the lack of accountability for violations of international human rights and humanitarian law by government forces and the secessionist Liberation Tigers of Tamil Eelam during the final months of their armed conflict, which ended in May 2009. The session begins February 27, 2012.

"The Sri Lankan army's announced inquiry appears to be a transparent ploy to deflect a global push for a genuine international investigation, not a sudden inspiration nearly three years after the war," said Brad



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Adams, Asia director at Human Rights Watch. "This inquiry, coming on the eve of a possible Sri Lanka resolution at the Human Rights Council, looks like yet another cynical and meaningless move."

Previously the Sri Lankan army had maintained that it bore no responsibility for any civilian deaths in the final months of the fighting. However, reports by a UN Panel of Experts, the US State Department, and human rights organizations such as Human Rights Watch have provided detailed accounts of indiscriminate shelling of civilians and extrajudicial killings by the Sri Lankan armed forces. The Sri Lankan government has repeatedly denounced these efforts, as well as the possible resolution at the Human Rights Council. [...]

➤ [Institute of Peace and Conflict Studies, LLRC Report on Sri Lanka's War: Pride, Prejudice and Paradise, 31/01/2012](#)

[...] The Government of Sri Lanka (GoSL) has recently released the much-criticized report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC). The report came in the midst of international pressure on the GoSL for its alleged war crimes and human rights abuses.

While the UN panel report focuses primarily on the last stage of the war ie 2008-09, the LLRC report narrates events between 2002 and 2009. Although the GoSL claims that the principal mandate of the inquiry committee was to find the real causes for the deterioration of the situation that led to war, the report overlooks the grim reality during the war and military excesses.

It is argued that the LLRC report highlights the GoSL's pride of war; asserts its prejudice over the perennial ethnic-conflict, and neatly paints a paradisiacal picture of the post-conflict situation. [...]

➤ [International Crisis Group, Women's Insecurity in the North and East, 20/12/2011](#)

[...] The International Crisis Group welcomes the public release of the report of Sri Lanka's "Lessons Learnt and Reconciliation Commission" (LLRC), presented to the Sri Lankan parliament on 16 December 2011. The report acknowledges important events and grievances that have contributed to decades of political violence and civil war in Sri Lanka and makes sensible recommendations on governance, land issues and the need for a political solution. But it fails in a crucial task – providing the thorough and independent investigation of alleged violations of international humanitarian and human rights law that the UN and other partners of Sri Lanka have been asking for. It is now incumbent on the international community, through the UN Human Rights Council, to establish an independent international investigation in 2012. Without such an investigation, accountability for the crimes committed at the end of the civil war is highly unlikely; without accountability, and a full understanding of the nature of the violations which took place on all sides, the seeds of future conflict will grow. [...]

➤ [Human Rights Watch, Sri Lanka: Report Fails to Advance Accountability, 16/12/2011](#)

[...] The report of the Sri Lankan government's Lessons Learnt and Reconciliation Commission (LLRC) disregards the worst abuses by government forces, rehashes longstanding recommendations, and fails to advance accountability for victims of Sri Lanka's civil armed conflict, Human Rights Watch said today. The serious shortcomings of the 388-page report, which was posted on a government website on December 16, 2011, highlight the need for an international investigative mechanism into the conflict as recommended by the United Nations Secretary-General's Panel of Experts in April.

The LLRC report was long awaited, but provided little new information or recommendations on accountability that could not have already been put into effect by the government, Human Rights Watch said. While the UN Panel of Experts recommended the establishment of an independent international mechanism to conduct investigations into the alleged violations, the LLRC report provides no realistic pathway for holding accountable military and government officials implicated in serious abuses. [...]

The LLRC report failed to examine the use of heavy artillery against civilian areas as possible indiscriminate attacks in violation of the laws of war, Human Rights Watch said. While summarily rejecting that the military's attacks either deliberately targeted civilians or caused disproportionate civilian harm, the LLRC did not even consider whether any attacks failed to discriminate between civilians and combatants, a major finding by the UN panel and Human Rights Watch. [...]

➤ [United Nations, Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31/03/2011](#)

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[...] EXECUTIVE SUMMARY

[...] Allegations found credible by the Panel

The Panel's determination of credible allegations reveals a very different version of the final stages of the war than that maintained to this day by the Government of Sri Lanka. The Government says it pursued a "humanitarian rescue operations" with a policy of "zero civilian casualties". In stark contrast, the Panel found credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law was committed by both the Government of Sri Lanka and the LTTE, some of which would amount to war crimes and crimes against humanity. Indeed, the conduct for the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace.

Specifically the Panel found credible allegations associated with the final stages of the war. Between September 2008 and 19 May 2009, the Sri Lanka Army advanced its military campaign into the Vanni using large-scale and widespread shelling, causing large numbers of civilian deaths. This campaign constituted persecution of the population of the Vanni. Around 330,000 civilians were trapped into an ever decreasing area, fleeing the shelling but kept hostage by the LTTE. The Government sought to intimidate and silence the media and other critics of the war through a variety of threats and actions, including the use of white vans to abduct and to make people disappear. [...]

Thus, in conclusion, the Panel found credible allegations that comprise five core categories of potential serious violations committed by the Government of Sri Lanka (i) killing of civilians through widespread shelling, (ii) shelling of hospitals and humanitarian objects, (iii) denial of humanitarian assistance, (iv) human rights violations suffered by victims and survivors of the conflict, including both IDPs and suspected LTTE cadre, and (v) human rights violations outside the conflict zone, including against the media and other critics of the Government. [...]

The Panel has concluded that the Government's notion of accountability is not in accordance with international standards. Unless the Government genuinely addresses the allegations of violations committed by both sides and places the rights and dignity of the victims of the conflict at the centre of its approach to accountability, its measures will fall dramatically short of international expectations. [...]

The Lessons Learnt and Reconciliation Commission

[...] In sum the LLRC is deeply flawed, does not meet international standards for an effective accountability mechanism and, therefore, does not and cannot satisfy the joint commitment of the President of Sri Lanka and the Secretary-General to an accountability process. [...]

### Paramilitary groups/rival political factions

Excerpt from the December 2011 OGN

3.6.25 The overall number of extrajudicial killings dropped significantly from the previous year. Nevertheless during the year [2010] unknown actors suspected of association with pro-government paramilitary groups committed killings and assaults of civilians. These included the Tamil Makkal Viduthalai Pulikal (TMVP), led by breakaway LTTE eastern commanders Vinayagamurthi Muralitharan, alias Karuna,, and Sivanesathurai Chandrakanthan, alias Pillaiyan,, in the east, as well as the Eelam People's Democratic Party (EPDP), led by the former Minister of Social Services and Social Welfare Douglas Devananda in Jaffna. These and other pro-government paramilitaries also were active in Mannar and Vavuniya. All of these groups endeavoured to operate political organizations, some with more success than others, and there were persistent reports of close, ground-level ties between paramilitaries and government security forces. Whereas these groups served more of a military function during the war, often working in coordination with security forces, the paramilitaries now took on increasingly criminal characteristics as they sought to solidify their territory and revenue sources in the post-war environment.<sup>26</sup>

This one paragraph of COI cites the July 2011 UKBA COIS Report on Sri Lanka which in turn cites the 2010 U.S. State Department report. In addition to being outdated, the fact that the TMVP and EPDP are only reported to be active in 2010 may be inaccurately read to imply that they are no longer operational. This section of the OGN also fails to include COI available in the public domain on the



targets and motivations of paramilitary groups, which are not only financially but also politically motivated:

➤ [Journalists for Democracy in Sri Lanka, New wave of abductions and dead bodies in Sri Lanka, 26/02/2012](#)

[...] In the past 5 months- October 2011 to February 2012- there has been a disturbing rise in the number of abductions, especially in and around the capital, Colombo. Out of 29 abductions and 3 missing persons reported in the media, most have not returned to their homes and families, rendering them 'disappeared' persons.

The manner of these abductions has sent alarm bells ringing within the Sri Lanka human rights community, recalling the twin phenomena of the 'white van' and the unidentified gunman which plagued the country in the period from 1987/1989, and which prompted two visits to the island by the UN Working Group on Enforced and Involuntary Disappearances in 1991 and 1992. [...]

Among those abducted have been social activists, businessmen and those identified by the Police as criminals and 'underworld' characters. Labelling abducted persons as belonging to the underworld points to a disturbing new element of 'social cleansing' which is being used to garner public support for these killings and to divert attention from the fact that these abductions are an expression of the collapse of the rule of law in Sri Lanka.

The abduction and killing of individuals from the so-called underworld can be in some way linked to the public altercation between ruling party MP Duminda Silva and Presidential Advisor and former MP Bhartha Lakshman Premachandra, in which the latter was shot and killed. Some of those abducted, 'disappeared' and killed, were linked to these two individuals and were either suspects or witnesses to the shooting, which took place on October 9 during campaigning for local government elections in Colombo.

Amongst others who have been abducted are those who have in any way challenged the authorities on issues of impunity and on-going human rights violations. [...]

➤ [Amnesty International, Man Abducted Days Before Court Hearing, 15/02/2012](#)

[...] Ramasamy Prabakaran, a Tamil businessman who brought a case against Sri Lankan police for torture, unlawful arrest and detention was abducted on 11 February at his home in Colombo, Sri Lanka, by armed men. He was due to appear in court on 13 February. There are fears for his safety. [...]

➤ [TamilNet, Pro Rajapaksa gang abducts, threatens Kaaththaankudi civil activist, 02/02/2012](#)

[...] A.C.M. Asam, a member of the Kaaththaankudi Good Governance People Movement was abducted last Friday by an armed men who came in motorbikes when he was returning home after seeing his ailing mother in the Batticaloa Teaching Hospital. Mr. Asam was later released after four hours, according to M.M.Abdur Rahuman, Soora council member of the movement at a media briefing held this week. Mr. Asam had exposed the fraud to the tune of 150,000 rupees that took place in the Kaaththaankudy UC. Asam had been threatened by the abductors not to work against Kaaththaankudi Urban Council chairman M.L.A.M.Hisbullah, who is a Deputy Minister in SL President Mahinda Rajapaksa's regime. [...]

➤ [Amnesty International, Further information: Concern grows for Sri Lankan Activist, 20/12/2011](#)

[...] New information concerning the disappearance of Sri Lankan political activists Lalith Kumara Weeraraj and Kugan Muruganandan indicates that they may be held in official custody. Despite several complaint lodged with local authorities, no credible action has been taken to investigate their disappearance. Lalith Kumara Weeraraju and Kugan Muruganandan were last seen leaving Kugan Muruganandan's residence in Avarangal, Jaffna, northern Sri Lanka, at around 5:00pm on 9 December. There were preparing a press conference to be held the following day, aimed at publicizing a protest highlighting human rights violations. Family members report they later received an anonymous phone call saying that Lalith Kumara Weeraraju had been killed.

On 14 December, Kugan Muruganandan's wife visited Atchchuveli Police Station to collect a copy of a complaint she had lodged regarding his disappearance. She saw the same motorbike on which he and Lalith Kumara Weeraraju had last been seen, with license no NP GT 7852, inside the police station grounds. Police officers at the station told her that it had been found by the Kopai Police on 13 December, parked near a Hindu temple in Kopai. On 15 December, Sri Lankan Cabinet Spokesperson, Minister

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Keheliya Rambukwella stated to media that “Mr Weeraraju and Mr Muruganandan have not been disappeared, they are there,” viewed by some as an acknowledgement that the two men are currently being held in official custody. Following the disappearance, a local parliamentarian lodged a missing persons complaint with Jaffna Police, who denied they were holding the two men in their custody. The same parliamentarian also submitted a written complaint to the Secretary to the Ministry of Defence and the National Human Rights Commission. However, despite these concerns being raised, no credible action has been taken to investigate the disappearance. [...]

➤ [Amnesty International, When will they get justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission, 07/09/2011](#)

[...] LAW AND ORDER

Many witnesses to the LLRC in the north, and particularly in Jaffna, noted law and order concerns, specifically extortion, abduction and other criminal acts by armed groups, some with ties to the Sri Lankan armed forces. The LLRC recommended that the Sri Lankan government disarm “illegal armed groups.” The IAAC reported that the Sri Lankan government had “taken immediate steps by giving a deadline for the surrendering of illegal weapons, as was successfully done in the Eastern Province, following the clearing of the LTTE from that area.” It said that the Sri Lankan government intended to enact an amendment to the Firearms Ordinance, which would restrict bail for people arrested in possession of firearms or explosives, noting that this was a special provision that was intended to be in operation only until the surrender of weapons was achieved.

It is unclear whether any progress has been made towards this objective, as of late June there were still reports of abductions and killings by unidentified armed groups in Jaffna district; individuals suspected of involvement were said to be members of paramilitary groups with ties to the Sri Lankan armed forces.<sup>93</sup> Threats and acts of intimidation against opposition politicians reportedly increased in July in the run up to local elections.

Amnesty International believes that disarmament alone will not end the pattern of violence; accountability is essential. The refusal of Sri Lankan authorities to acknowledge and investigate allegations of such violations and bring perpetrators to justice fuels a growing lawlessness in the country, including by members of the state security forces and their paramilitary affiliates. [...]

➤ [Immigration and Refugee Board of Canada, Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport, 22/08/2011](#)

[...] The joint submission by Law and Society Trust and others states that if the airport authorities suspect that someone’s documents are forgeries, the person would undergo “extended questioning and possible detention” (Law and Society Trust et al. 18 July 2011, 5).

The Law and Society Trust-led joint submission also notes that even if a deported/returned person is ‘cleared’ and allowed to leave the airport, they are in danger of being detained at check-points for any number of reasons, and also subject to intimidation and extortion. They also face a threat from paramilitary groups who may abduct and torture them for information or for purposes of extortion. (ibid., 6) [...]

### Treatment of failed Asylum seekers

Excerpt from the December 2011 Sri Lanka OGN

3.6.26 In a letter dated 18 March 2011 the British High Commission in Colombo reported that they routinely monitor the arrival of returnees at Bandaranaike International Airport in Colombo. All Sri Lankan returnees, regardless of which country they are returning from, go through a process whereby they are spoken to by representatives from the Department of Immigration & Emigration (DIE), the State Intelligence Service (SIS) and the Criminal Investigations Department (CID). Returnees are able to pass through the airport after routine checks are carried out on their identity and documentation.

3.6.27 BHC provides its contact details to returnees and they are encouraged to contact the Migration team if they encounter difficulties including any instances of harassments or assaults. This is not just

limited to the entry procedures at the Airport, but also for postarrival assistance. **There have been no allegations that airport staff having mistreated returnees.**

3.6.28 A BHC letter dated 3 October 2011 stated that on 28 September 2011 50 enforced returnees from the UK, many of whom were failed asylum seekers arrived back in Colombo. The ethnic split of the returnees was 27 Tamil, 12 Muslim and 11 Sinhala, and there were 42 males and 8 females. All of the returnees were in possession of their own valid national passport or an Emergency Travel Document issued by the Sri Lankan High Commission in London. Representatives from the International Organization for Migration (IOM) spoke individually to each returnee to hand over a travel grant in Sri Lankan Rupees equivalent to £50, to enable the returnee to have the means to travel to their onward address anywhere in Sri Lanka, and for overnight accommodation where required. Each returnee provided contact details to IOM.

Despite sources available in the public domain documenting the mistreatment of Sri Lankan returned refused asylum seekers by the Sri Lankan authorities (see further below), no such information has been included in the OGN. This is the more surprising since the UKBA COI Service (COIS) issued on 30<sup>th</sup> November 2011 a *Bulletin* listing recent reports on torture and ill-treatment in Sri Lanka, which includes a report by Freedom from Torture submitted to the UN Committee Against Torture in November 2011 based on a study published in the same month that found instances of torture and ill-treatment committed against Sri Lankan returnees as follows:

➤ [Freedom from Torture, Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka in November 2011, November 2011](#)

[...]1. Profile of cases [...]

Return to Sri Lanka from abroad

Fourteen of the 35 cases report periods of residence or travel abroad: 5 were for educational purposes, 3 for family reasons and 4 for the purpose of seeking asylum or refuge outside of Sri Lanka. In the remaining 2 cases, the purpose of travel was not stated. Of the 4 who sought refuge abroad, 3 were forcibly returned to Sri Lanka. In one case the individual had claimed asylum unsuccessfully in the UK a number of years earlier but was returned to Sri Lanka from another European state. The second case involves a similar scenario – an individual who had claimed asylum unsuccessfully in a European state was returned by a second European state whilst en route to a non-European state where a new asylum claim was to be lodged. The third was returned from another European state after two years of residence, having been refused asylum there. In each of these cases, the person was tortured on return. Of those 10 cases involving individuals travelled abroad for non-asylum purposes, 9 returned voluntarily to Sri Lanka (all from the UK). Five returned voluntarily for temporary visits for a variety of family reasons. Two individuals returned due to the disappearance of their fathers and two others returned voluntarily, presumably at the end of their planned stay abroad, though this is not explicitly stated. The remaining individual was en route to a non-European state for family reasons, but was returned en route due to the use of false documents. All of the 14 individuals who had returned to Sri Lanka after a period abroad, whether they left Sri Lanka legally or otherwise, were subsequently detained and tortured. In 5 of the 14 cases, the episode of detention and torture documented in the MLR occurred over a year and up to 7 years after return. However in 9 cases the individual was detained within days, weeks or a month of their return. Of these 9 cases, 6 were detained in Colombo, either from 5 their home (n=3) or at checkpoints (n=2) or from a lodging house. Two were detained at checkpoints elsewhere in the country and 1 was detained directly from the airport on arrival. [...]

➤ [Freedom from Torture, Out of Silence: New Evidence of Ongoing Torture in Sri Lanka 2009-2011, November 2011](#)

[...] Rohan was tortured on his return to Sri Lanka from the UK in early 2011. He was referred to Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture) several months ago when he escaped – on payment of a bribe by his family – and flew back to the UK [...]

Why were they targeted? [...]

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Return to Sri Lanka from abroad: 14 of the 35 cases report periods of residence or travel abroad preceding detention and torture: five travelled for educational purposes, three for family reasons and four for the purpose of seeking refuge outside of Sri Lanka. In the remaining two cases, the purpose of travel was not stated. Of the four who sought refuge abroad, three were forcibly returned to Sri Lanka. In one case the individual had unsuccessfully claimed asylum in the UK a number of years earlier but was returned to Sri Lanka from another European state. Another was returned from a European state after two years of residence, having been refused asylum there. Of the 10 cases involving individuals who travelled abroad for non-asylum purposes, nine returned voluntarily to Sri Lanka (all from the UK). Several report returning for temporary visits for a variety of family reasons and two due to the disappearance of their fathers. One individual was en route to a non-European state for family reasons, but was returned en route due to the use of false documents. All of the 14 individuals who had returned to Sri Lanka after a period abroad, whether they left Sri Lanka through a legal route or otherwise, were subsequently detained and tortured. In five of these cases, the episode of detention and torture documented in the MLR occurred over a year and up to seven years after return. However, in nine cases the individual was detained within days, weeks or a month of their return. Of these nine cases, six were detained in Colombo, either from their home, at checkpoints or from a lodging house. Others were detained at checkpoints elsewhere in the country or directly from the airport upon arrival. [...]

Other detainees (non-‘surrendees’)

2011: The two cases of individuals detained in 2011, report being taken from checkpoints. Both had been previously resident in the UK and returned for family reasons. 2010: Four of the six cases detained in 2010 report being arrested at their own home or that of their family, in locations including Kandy and Colombo. One was taken at a checkpoint and the other from his workplace in Colombo. Two of these individuals report being taken by plain-clothed ‘officials’ and transported to the detention facility in unmarked ‘white vans’. Four of these six individuals had recently returned from abroad, three for family or health reasons and one due to a refused asylum claim (from the UK and another European state respectively). Five of the six cases report detention due to an imputed association with the LTTE through a family member or friend. [...]

Vasudev, tortured in late 2010 on return to Sri Lanka: Vasudev returned to Sri Lanka from the UK, where he was studying, for family reasons in late 2010. He was planning a short visit. He was picked up at an army checkpoint after an informer identified him as an LTTE member. He was taken to an army camp where he was held in a small, dark cell. Vasudev was taken to another room every day to be interrogated about his links to the LTTE. During interrogations he was beaten with wooden sticks and kicked by the guards. On several occasions a plastic bag filled with petrol fumes was placed over his head and tightened around his neck. The guards would also often force his head beneath water in the basin of his cell until he struggled for breath. On one occasion he was taken to the interrogation room and held down on the floor and was burned repeatedly on his back and legs with a heated metal rod. On the day after the burning occurred he was forced to sign a confession document, which was in Sinhalese so he does not know what it said. On three separate nights, two guards came into his cell and sexually abused him. He was released after 10 days when his father paid a bribe. When the army officials released him he was afraid that they were going to shoot him. He spent a few weeks recuperating before flying back to the UK. The Freedom from Torture medico-legal report documents his various scars as ‘diagnostic’, ‘highly consistent’ and ‘consistent’ with the torture methods he described. Vasudev had been previously detained in Sri Lanka during the civil war; the clinician producing the MLR assessed the aging of the scarring. As the scars were not fully mature at the time of the examination (less than six months) it was deemed not reasonable that they had occurred before he first came to UK in late 2009. [...]

The COI included in the OGN fails to address the ill-treatment of refused asylum seekers as was available at the time of publication of the OGN, and which continues to be reported:

- [Human Rights Watch, UK: Halt Deportations of Tamils to Sri Lanka: Credible Allegations of Arrest and Torture upon Return, 25/02/2012](#)

[...] Research by Human Rights Watch has found that some returned Tamil asylum seekers from the United Kingdom have been subjected to arbitrary arrest and torture upon their return to Sri Lanka.

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[...] Human Rights Watch has documented eight recent cases in which people deported to Sri Lanka have faced serious abuses. A Tamil deportee from the United Kingdom, RS (a pseudonym for security reasons), said that army soldiers in Sri Lanka arrested him on December 29, 2011. He alleged that during interrogation he was beaten with batons and burned with cigarettes, and that his head was doused with kerosene. He also said that his head was submerged in a bucket of water, that he was hung upside down, and that hot chilis were placed under his head and chest. He said that as a result of this torture, he confessed to being a member of the separatist Liberation Tigers of Tamil Eelam (LTTE), which were defeated in May 2009. He said that he paid a substantial bribe to escape from detention, and fled back to the United Kingdom, where he has applied for asylum.

DB, a Tamil deported from the United Kingdom in 2011, said that he was arrested at a Sri Lankan army checkpoint on December 10. He alleged that he was forced to strip naked and burned with cigarettes and beaten until he agreed to sign a document in Sinhala. He said the soldiers told him he had to work as an informer for the army to identify former LTTE cadres. Like RS, he said he escaped detention after a family member paid a bribe for his release, then secured false documents to return to the United Kingdom, where he has again applied for asylum status.

Another 2011 deportee, AH, alleges that he was arrested by the police Criminal Investigation Department (CID) soon after arriving in Colombo, Sri Lanka's capital. He said that he was stripped naked and was beaten and tortured until a family member paid a bribe for his release.

Human Rights Watch has also documented cases of Tamil deportees who alleged to have been subjected to rape as a form of torture upon their return to Sri Lanka. In December 2010, CB was arrested at the Colombo airport on his return and was detained for a month by the CID. He said that during this time he was beaten with metal rods and raped four or five times by two men. As he described it, one man would hold him down while the other raped him.

BK, a Tamil woman, alleges that she was arrested at Colombo airport by the CID on her return in April 2010 and kept in detention. She says she was raped by several men many times during the course of her detention. She described profuse bleeding as a result of these rapes. Both CB and BK managed to secure their release after relatives intervened to bribe the officials holding them. Both fled Sri Lanka and are seeking asylum in the United Kingdom.

Human Rights Watch has obtained medical evidence supporting each of the above claims of torture.

Asylum tribunals in the United Kingdom have recently concluded that the lack of an official identification card is not a risk factor for returnees. However, in two cases returnees alleged that they were specifically targeted because they did not possess the required IDs.

[...] Human Rights Watch and others have learned that returnees are met at the Colombo airport by UK embassy staff and given a document with the contact information for the embassy. British officials have stated that they do not have the capacity to monitor the safety of returnees and that returnees may fear retaliation from the Sri Lankan government if they make contact with the UK embassy. [...]

➤ [The Guardian, Deported Tamils 'face torture' on return to Sri Lanka, 15/12/2011](#)

[...] Up to 50 passengers heading to Sri Lanka on a UK Border Agency forced-removals flight risk being tortured on their return, human rights organisations have warned. The flight, which will depart on Thursday afternoon from an as yet undisclosed British airport, is expected to go ahead despite new evidence of recent alleged mistreatment by Sri Lankan security services. The UK Border Agency has carried out two large-scale deportations to Sri Lanka since June, the last of which left from Luton airport in September, despite the concerns of several rights groups – including Amnesty International and Human Rights Watch – who believe that deported Tamils may be at risk of arbitrary arrest and mistreatment.[...]

➤ [Amnesty International, Sri Lanka: Briefing to Committee Against Torture, October 2011](#)

[...] 3. Torture and Ill-Treatment [...]

RISK OF TORTURE FOR FAILED ASYLUM SEEKERS

Sri Lankan nationals returning to the country after living abroad are at risk of being arbitrarily detained on arrival or shortly thereafter. Sri Lankan nationals who are failed asylum seekers are especially at risk and are likely to be interrogated on return. Sumith Mendis and Indika Mendis were detained in 2009 at the Christmas Island detention centre after the boat in which they were crew members was stopped by Australian authorities and found to be carrying Sri Lankan asylum seekers. Their own requests for asylum



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were denied and they were deported to Sri Lanka and promptly arrested and handed over to the Central Investigative Department (CID). Sumith Mendis was released, but Indika Mendis said that he was tortured in CID custody, sustaining severe ear injuries before being transferred to the notorious Negombo prison where he was held for eight months. On 14 August 2010, the brothers were arrested again, apparently on suspicion that they were again planning to migrate to Australia. Sumith Mendis stated that he was tortured by the CID for six days, experiencing beatings and psychological abuse. [...]

➤ [Immigration and Refugee Board of Canada, Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport, 22/08/2011](#)

[...] After seeking information from Sri Lankan government officials, mission staff and other in-country stakeholders, an official from the Canadian High Commission in Sri Lanka stated the following in his correspondence with the Research Directorate: The screening process is the same for all persons returning to Sri Lanka - whether voluntarily or by escort. The process is not impacted by ethnicity. The process for persons removed to Sri Lanka begins with verification of the person's citizenship by Sri Lankan Immigration. Once a person's right to enter has been established, clients are then interviewed at the airport by Criminal Investigations Division (CID), followed by an interview by the State Intelligence Service (SIS). Sri Lankan State Intelligence Service's questions are often in regards to how a client departed the country. They are seeking information about human trafficking and smuggling from the country. The CID conducts criminal background check[s] of returnees by contacting police stations in all districts that a client may have lived. As criminal records are not accessible through a national databank, the final criminal checks may take 24-48 hours to complete depending on the day of the week a person arrives in Colombo. Generally, police record checks may be completed in a few hours, but if a client arrives on a Saturday or Sunday it may take a bit longer to contact appropriate offices. Following this admission process deported Sri Lankan nationals are free to enter the country. (Canada 16 Aug. 2011)

In contrast to the Canadian High Commission official's statement is a joint submission prepared specifically for the Research Directorate by the following parties: Law and Society Trust, a non-profit organization based in Colombo that is "conducting human rights documentation, research and advocacy" work (Law and Society Trust n.d.); INFORM Human Rights Documentation Centre, a "Sri Lankan human rights organization" that has been active since 1989 and that focuses on "monitoring, documentation and networking" (WEDO n.d.); Networking for Rights in Sri Lanka, a group creating a national and international network of Sri Lankan human rights defenders (NFR Sri Lankan.d.); and a human rights lawyer in the United Kingdom (UK) (Law and Society Trust et al. 18 July 2011, 7).

With regard to security procedures at the Colombo airport for failed Tamil refugee claimants, their joint submission states that [i]mmigration authorities are alerted about the impending arrival of those who are deported or who are 'returned' as a result of failed asylum processes. They are also identifiable by the fact that they travel on temporary travel documents. These individuals are taken out of immigration queues and subjected to special questioning by the Police, and by members of the Terrorist Investigation Department [TID]. They are almost always detained, sometimes for few hours, and sometimes for months, until security clearance is obtained. In situations in which most families of the deported/returned persons have been displaced due to the war, are not contactable by telephone, and in which Police records that could attest to their legitimate address and non-involvement in criminal or terrorist activity have often been misplaced due to the constant cycles of displacement undergone by the entire community of the North and East in the past years, obtaining the required security clearance may take months. If there is no family member to follow up, this may lead to indefinite detention. (Law and Society Trust et al. 18 July 2011, 5) Their joint submission further notes that Tamil returnees are "particularly vulnerable if they arrive individually, and if no one knows they are arriving" (ibid., 6).

On 19 May 2010, the Director of the Edmund Rice Centre, an Australian research, advocacy and networking organization that also works with refugees and asylum seekers (Edmund Rice Centre n.d.), said that Sri Lanka is "not safe for deported asylum seekers," including anyone connected to the Tamil Tigers or who left the country illegally (ibid. 19 May 2010). He explained that the Sri Lankan authorities are of the view that "any Tamil who fled the country in an unauthorized way must be an LTTE [Liberation Tigers of Tamil Eelam] sympathizer, or if they are Sinhalese, then they must be a traitor" (ibid. 19 May 2010). The Director also noted that in the months leading up to May 2010, "all asylum seekers returned to Sri Lanka ...



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[were] handed over to the CID, the Sri Lankan Police, and taken into custody. Some [were] detained, some [were] assaulted." (ibid.)

In a 30 June 2011 telephone interview with the Research Directorate, an adjunct professor of political science at Temple University, who is currently conducting research on Sri Lanka, indicated that information from sources in Sri Lanka suggests that the government has stationed former Tamil Tigers, who have sided with the government and are working with the Sri Lankan security forces, at the Bandaranaike International Airport where they screen arriving individuals. The professor noted that

if you are a Tamil and have any connection to the Tamil causes, it is very likely that you would be screened at the airport and taken into police custody. It is very hard for anyone that has a connection to the Tamil Tigers to go back to Sri Lanka. (Adjunct Professor 30 June 2011)

He also said that Tamils without any connection to the Tamil Tigers but with a history of opposing government policies would be considered associated with the Tigers and be screened at the airport (ibid.). The professor further stated that a person who has any past connection to the Tamil Tigers or a history of opposing the government will be detained and questioned (ibid.). He added that there have been reports of "abuse and torture" of airport detainees (ibid.).

The Director of the Edmund Rice Centre also noted that "[a]nyone who publicly dissents from the Government's position is at risk" (19 May 2011). He explained that "[d]etention can be indefinite and court processes are heard within the prison itself. No legal arguments are taken, and most often magistrates just continue to postpone the cases to a later date." (ibid.)

In a January 2011 article, the daily *Sri Lanka Guardian* reported that Colombo's Katunayake International Airport has a "heavy presence of the intelligence officers" who "systematically targeted" Tamils coming back from overseas, putting them through "extensive interrogative processes for several hours" (5 Jan. 2011). According to the news site's sources, Tamil passengers on all incoming and outgoing flights are the focus of the TID (*Sri Lanka Guardian* 5 Jan. 2011). These sources report that TID officials take individuals into custody, either interrogating them for hours or taking them away "in unmarked white vans to unknown destinations" (ibid.).

Similarly, the joint Law and Society Trust submission notes that Tamil returnees are detained and questioned about their connections with the LTTE in Sri Lanka, prior to their leaving the country, about the circumstances of their departures and about their links while they were outside the country. This can be a long process and under the PTA [Prevention of Terrorism Act] persons can be detained for prolonged periods. (Law and Society Trust et al. 18 July 2011, 6)

According to the joint submission, detention conditions are "very brutal" (ibid.). The United States (US) *Country Reports on Human Rights Practices for 2010* indicates that prison conditions in Sri Lanka are overcrowded and "lack ... sanitary facilities" (US 8 Apr. 2011, 8). It also reported other problems with prison conditions, including that prisoners were "sleeping on concrete floors," there was insufficient ventilation, and that there were reports of abuse coming from female-only prison sections (ibid.).

In contrast, the Canadian High Commission official noted that

[t]here have been only four cases of persons having been detained upon arrival of which the Canada High Commission is aware. Each of these cases involved outstanding criminal charges in-country and were not related to their overseas asylum claims or their ethnicity. Persons of all ethnic backgrounds are returned either under escort or voluntarily to Sri Lanka daily, and the screening and admission process for all these persons remains the same. (Canada 16 Aug. 2011)

However, Human Rights Watch publicly expressed concern about Britain returning rejected asylum seekers to Sri Lanka because it believes that "Sri Lankan nationals who have been affiliated with or are considered to be supporters of the ... LTTE, would be at significant risk of persecution if deported back to Sri Lanka" (16 June 2011). The organization noted that its research "shows that Sri Lankan authorities have frequently violated the basic rights of people suspected of being affiliated with or supporters of the LTTE" (Human Rights Watch 16 June 2011).

*Hatnews*, a UK-based "conduit of information and news for asylum seekers [and] refugees" (n.d.a), which is provided by "professional Journalists from around the world who are either currently refugees and asylum seekers in the UK or have gained their 'status' but are not currently working in journalism" (*Hatnews* n.d.b), states that "there are growing claims made by returnees of detailed questions being asked during the documentation process by the SLHC [Sri Lanka High Commission in the UK] as to the content of their asylum claims and LTTE connections" (ibid. 10 June 2011). [...]

## **Documents**

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The Canadian High Commission official informed the Research Directorate that

[o]ver the past 2 years, there have been no recorded cases of detention or other issues related to persons who departed the country without legal documents. There have been no known adverse impacts for persons returning having originally depart[ed] without an issued passport. Those clients without valid travel documents to return to Sri Lanka must provide their details to Sri Lankan Missions. These missions verify citizenship and issue travel documents to return. There has been no issue for clients identified from this process. (Canada 16 Aug. 2011)

The Temple University adjunct professor noted that people who left the country illegally and have no documentation upon their return are selected for screening; however, as mentioned already, they would be "safe" if they are not connected to any government-opposed activities (Adjunct Professor 30 June 2011). The joint submission by Law and Society Trust and others states that if the airport authorities suspect that someone's documents are forgeries, the person would undergo "extended questioning and possible detention" (Law and Society Trust et al. 18 July 2011, 5).

The Law and Society Trust-led joint submission also notes that even if a deported/returned person is 'cleared' and allowed to leave the airport, they are in danger of being detained at check-points for any number of reasons, and also subject to intimidation and extortion. They also face a threat from paramilitary groups who may abduct and torture them for information or for purposes of extortion. (ibid., 6) [...]

### Torture/ ill-treatment and Conclusion

Excerpt from the December 2011 OGN

#### ***Torture/ ill-treatment***

[...] 3.6.12 The Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka, November 2011 observed that the those at particular risk of torture include Tamils who have an actual or perceived association with the Liberation Tigers of Tamil Eelam (LTTE).<sup>17</sup>

[...] 3.6.30 **Conclusion.** The latest IAC country guidance case, TK, confirms the risk categories identified in LP which were also endorsed by the ECtHR in NA and finds that the military defeat of the LTTE in 2009 has not aggravated the likely approach of the Sri Lankan authorities to returned failed asylum seekers who are Tamils; if anything, the level of interest in them has decreased. The principal focus of the authorities continues to be, not Tamils from the north (or east) as such, but persons considered to be either LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms.

3.6.31 UNHCR 2010 Guidelines said that at the time, owing to reports of torture of persons suspected of LTTE links in detention; deaths of LTTE suspects whilst in custody; as well as poor prison conditions (see section 3.9 below), persons suspected of having links with the LTTE may be at risk of persecution in Sri Lanka. UNHCR also notes that, according to some reports, young Tamil men, particularly those originating from the north and east of the country may be disproportionately affected by the implementation of security and anti-terrorism measures on account of their suspected affiliation with the LTTE.

3.6.32 The IAC found in TK that the records the Sri Lanka authorities keep on persons with some history of arrest and detention have become increasingly sophisticated; their greater accuracy is likely to reduce substantially the risk that a person of no real interest to the authorities would be arrested or detained.

3.6.33 As noted above (3.6.9), several thousand people were detained or "surrendered" when the conflict came to an end, including some with minimal involvement in the LTTE. Reports vary as to actual numbers, but several thousand with low level involvement have since been released in tranches which suggests that in general they are not of continuing interest to the authorities. The key question, in light of improvements in the overall security situation, is whether any past involvement in the LTTE is currently likely to bring returnees to the adverse attention of the Sri Lankan authorities.

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3.6.34 If credibility is accepted, case owners should assess the applicant's individual circumstances taking into account the LP risk factors together with the added guidance given in TK, particularly with regard to the international procurement network and arms supply. The evidence suggests that many Tamils were forcibly recruited by the LTTE and many others had only minor involvement. Such persons are less likely to be either known or of current interest to the authorities than those with a significantly higher profile. However, each case should be considered carefully on its own facts.

It is considered that the *Conclusion* for this main category of claim is not fully consistent with the COI contained in the *Treatment* section of the OGN, nor with COI which is currently available in the public domain. The *Conclusion*, particularly at paragraph 3.6.30 relies on the findings of TK, the Country Guidance case which was promulgated back in December 2009. In particular, the *Conclusion* fails to take account of the COI which post-dates this Country Guidance case which documents that it is Tamils perceived to support the LTTE, not only persons with past involvement with the LTTE, whom continue to be at risk of torture in Sri Lanka, as is reported by Freedom From Torture cited above in the *Treatment* section of the OGN at paragraph 3.6.12. Both the *Treatment* section and the *Conclusion* of the OGN also fail to take account of the on-going disproportionate impact of the 'Emergency Regulations' on persons of Tamil ethnicity, harassment and beatings committed by the security forces and attempts to forcibly relocate Tamil communities as is detailed above on page 2. The *Conclusion* also fails to take account of the evidence as presented above on page 10 that returned asylum seekers from the United Kingdom have been subjected to arbitrary arrest and torture, which suggests that returning to Sri Lanka from abroad is also a risk factor.

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### **3.8 Journalists, civil society, human rights activists, opposition supporters**

Excerpt from the December 2011 OGN

3.8.7 Overtly, 2011 has been a period of relative calm and overall the situation has improved from what it was during the final phase of the war and the immediate aftermath of the 2010 presidential election. No murders of journalists were reported last year. And although there has been a decline in the number of recorded attacks on journalists several incidents were reported.<sup>46</sup>

It is considered that the above section of the OGN paints an overly positive picture of the situation for journalists in Sri Lanka and that it is misleading to report an improved situation compared to the period of armed conflict in 2009. In contrast to the situation reported in this section of the OGN, sources document that journalists continue to be subjected to harassment, violence and intimidation and are at risk of torture:

➤ [International Crisis Group, Government Promises, Ground Realities, 01/03/2012](#)

[...] Continuing human rights abuses

Government claim: On the question of ongoing human rights abuses, the government's primary response is to ignore them or to point to its long-awaited National Action Plan for the Protection and Promotion of Human Rights, which it is presenting to the Human Rights Council this session.

Reality: The National Action Plan is wholly inadequate to deal with the scale and severity of human rights abuses since the end of the war. With no provisions to respond to the culture of impunity that perpetuates violations, the plan is part and parcel of the government's strategy of denial. Since the Human Rights Council last met, Sri Lankan civil society organisations have documented dozens of extrajudicial killings, abductions, disappearances and acts of torture – carried out throughout the island. Abductions and disappearances were one of the government's main instruments of counter-insurgency in the final years of the war, targeting Tamils suspected of working with the LTTE, as well as Sinhala and Muslim critics of the government. After coming down in the aftermath of the war, the rate of abductions and disappearances has surged again in the past few months.

Political activists and perceived opponents of the government appear to be targets, such as in the 9 December 2011 disappearance of two activists associated with the dissident faction of the JVP (more sympathetic to the plight of Tamils in the northeast) who had travelled to the northern town of Jaffna to organise a protest against enforced disappearances. Individuals who challenge government abuse are also at risk – as demonstrated by the 11 February 2012 abduction of a Tamil businessman in Colombo just days before the supreme court was due to hear his fundamental rights petition alleging unlawful arrest and detention and torture, stemming from his May 2009 arrest as a suspected LTTE member and 28-month detention. There also have been a number of police shootings and cases of excessive use of force against peaceful protestors in the last eight months, including on 15 February 2012 when the police Special Task Force (STF) killed a fisherman protesting against rising fuel prices in Chilaw.

All of these abuses further erode the rule of law and stifle dissent. Attacks on the media and on human rights defenders, including in the lead up to the current Human Rights Council session, only reinforce fear and distrust – and make it even more difficult for victims to trust law enforcement institutions. The crippling flaws of the National Action Plan are no doubt in part due to the fact that civil society was largely excluded from drafting the final version despite government claims that it was developed through a collaborative process. [...]

➤ [Reporters Without Borders, RSF calls on UNHRC to condemn violations of freedom of information, 28/02/2012](#)

[...] Reporters Without Borders calls on all members of the Geneva-based United Nations Human Rights Council, which began its 19th session yesterday, to pass a resolution condemning the Sri Lankan government's violations of freedom of information and to demand an end to threats and violence against news media and human rights defenders in Sri Lanka.

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"For more than a year we have been seeing new forms of censorship and a deterioration in journalists' ability to work although the war with the Liberation Tigers of Tamil Eelam (LTTE) officially ended in 2009," Reporters Without Borders said. "Rather than wait until the Universal Periodic Review to make recommendations, the Human Rights Council's members should adopt a resolution now urging the government to take measures to improve freedom of information.

"The number of cases of physical attacks, death threats and imprisonment may have fallen in 2010 and 2011, but the authorities continue to prevent the media from enjoying real editorial freedom and many journalists are still in exile. Sri Lankan and foreign media are still unable to cover the issue of war crimes, which will be at the centre of the Human Rights Council's discussions during the 19th session.

"An immediate reaction is needed to the obstruction of journalists who want to cover the activities of the Lessons Learned and Reconciliation Commission (LLRC) and to self-censorship on this subject for fear of reprisals. The Human Rights Council must remind the Sri Lankan government of the importance of the media's role as a critic and urge it to respect freedom of information. We call on the government to accept constructive questions from civil society and to stop branding its critics as 'conspirators' and 'LTTE accomplices'."

January - February 2012 timeline

Journalists and media defenders have been constant targets of violence, threats and propaganda. The censorship of websites, especially those based abroad, has increased since the beginning of 2011. The events of the past two months amply illustrate the way the government is treating journalists.

Since 25 February: Distributed Denial-of-Service Attacks (DDoS) have been disrupting web traffic of TamilNet.com. The service provider is struggling to keep the website online.

23 February: The supreme court held its third hearing on the blocking of news websites. Access to four leading independent news websites - SriLankaMirror, SriLankaGuardian, Paparacigossip9 and LankaWayNews - has been blocked since 6 November on the orders of the information ministry, which announced on 5 November that all news websites with "any content relating to Sri Lanka" needed to register with the ministry.

16 February: The defence ministry posted an article on its website accusing Journalists for Democracy in Sri Lanka (JDS), an exile organization, of "treachery and conspiracy" against the government and security forces on the eve of the Human Rights Council's 19th session.

15 February: Prasad Purnimal Jayamanne, a freelance journalist working for the BBC's Sinhalese service and a member of the South Asian Free Media Association (SAFMA), was attacked and badly beaten while filming a demonstration by fishermen in Chilaw, 100 km north of Colombo, in protest against the death of a fisherman at the hands of the police and the injuries sustained by others. Jayamanne had to be hospitalized.

8 February: The state-owned daily Dinamina accused the Free Media Movement of obstructing democracy and freedom in Sri Lanka, giving the country a bad image, and inciting separatism and terrorism.

26-27 January: Media minister Keheliya Rambukwella accused journalists of collaborating with the LTTE and with foreign media and NGOs in order to smear Sri Lanka's image. He said he had a list of journalists working against the government, including the organisers of the "Black January" campaign, which was based on the fact that there were major press freedom violations every January during the past three years. They included Sunday Leader editor Lasantha Wickrematunge's murder in January 2009 and political cartoonist Prageeth Ekneligoda's disappearance in January 2010, which have become symbols of violence against the media and the impunity enjoyed by those responsible.

25 January (and following days): After the Alliance of Media Organizations in Sri Lanka held a "Black January" demonstration (which had to be moved to a different location because of a counter-demonstration by government supporters), some of the demonstration's organizers were followed by unidentified individuals for several days.

10 January: The government accused the Free Media Movement of collaborating with the political opposition and organizing a campaign to get the European Union to suspend Sri Lanka's preferential trade status under the GSP+ accord.

5 January: The start of the trial of a man accused of the April 2005 murder of journalist Dharmaratnam Sivaram was postponed by Colombo high court judge P. Surasena after the prosecutor said he was unable to proceed because six prosecution witnesses, including two policemen, had failed to show up. The judge also dissolved the jury. Sivaram was kidnapped in Colombo and his body was found near the parliament building the next day.

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January (start of the month): When state-controlled Independent Television Network (ITN) broadcast footage of media freedom activists demonstrating during the September 2011 session of the UN Human Rights Council, it accused them of being LTTE members. [...]

- [Tamil Net, Colombo-backed group attacks Muslim journalist in Batticaloa, 14/02/2012](#)  
[...] Puvi Rahumathulla, the chief editor of a weekly magazine “Vaara Uraikal” published from Kaaththaankudi in Batticaloa district was attacked by a group of persons Friday while he was distributing copies of his magazine, according to complaints lodged with the Kaaththaankudi Police.  
Vaara Uraikal magazine has been critical of Mahinda Rajapakse regime, disclosing corrupt practices of SL deputy ministers of the Colombo government in the district and fraudulent activities of Kaaththaankudi Piratheasa Chapai (PS) run by pro-Rajapaksa Muslim politicians.  
Rahumathulla has been harassed and intimidated by pro-government elements continuously for exposing misdeeds of the Colombo government and its henchmen in the Batticaloa district. He was assaulted in 2010 and 2011. [...]
- [Tamil Net, SL Minister Devananda threatens to attack journalists of Jaffna daily, 09/02/2012](#)  
[...] “I told my [paramilitary] boys to beat up these journalists. But, the boys are not paying attention. It seems I have to go in person and do it to make these journalists behave,” was the newest controversial comment by SL Minister and EPDP paramilitary leader Douglas Devananda on Thursday evening at a meeting held at Jaffna District Secretariat, where he was talking to unemployed graduates who were demanding employment. The spontaneous comment by Mr. Devananda came when SL military governor's secretary informed him of a news item that appeared in the Jaffna edition of Thinakkural exposing the diversion of funds allocated to development of schools in Vanni to the highly showcased construction of swimming pool which was declared opened by SL President Mahinda Rajapaksa. [...]
- [Human Rights Watch, World Report 2012, 22/01/2012](#)  
[...] Free expression remained under assault in 2011. Gnanasundaram Kuhanathan, editor of a Jaffna-based newspaper, was beaten with iron bars by a group of unidentified youths in late July. He was severely injured and required hospitalization. In July a team of Radio Netherlands journalists were harassed by police and later robbed and attacked at gunpoint by a gang in a white van, a notorious symbol of terror in Sri Lanka. Lal Wickrematunge, chairman of the Sunday Leader and brother of Lasantha Wickrematunge (who was gunned down in 2009), received a phone call from President Rajapaksa in response to an article on high-level corruption in which the president said to Wickrematunge, “You are writing lies, outrageous lies! You can attack me politically, but if you attack me personally, I will know how to attack you personally too.”  
There have been no further developments regarding the killing of Lasantha Wickrematunge or the disappearance of Prageeth Ekneligoda, a contributor to Lanka e-news, who has been missing since January 24, 2010. [...]  
In November the government blocked at least six news websites claiming that they had maligned the character of the president and other top government officials. [...]
- [TamilNet, SL military-led administration in North harasses Tamil journalists, 07/01/2012](#)  
[...] After two years of war and claims that Colombo has resettled civilians in Vanni, remote areas of the mainland still remain prohibited for Tamil journalists. Sri Lankan military intelligence officers and operatives systematically harass the journalists who visit the areas beyond the ‘A9 comfort zone’ of the occupying SL military. Meanwhile, harassment by SL military-led administration has increased in the Jaffna peninsula. On Friday, a 28-year-old reporter in Jaffna, A. Daniel, was taken to SL police station in Jaffna and questioned for 3 hours by the SL police, allegedly for exposing SL military governor not allowing the Jaffna GA for a separate meeting as scheduled with the British Conservative MP James Wharton, who was taken on a guided tour to Jaffna with the Sri Lankan High Commissioner in London. [...]
- [World Organisation Against Torture \(OMCT\), RI LANKA: 42 human rights defenders and political activists detained to prevent them from participating in a peaceful protest in Jaffna on Human Rights Day, 15/12/2011](#)



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[...] On December 10, 2011, 42 human rights defenders and opposition activists from the southern part of Sri Lanka were detained by the police in the northern town of Jaffna as they were about to attend a protest to mark the international human rights day. [...]

At around 9.00 am on December 10, a bus carrying 42 human rights defenders, journalists and political activists from Colombo and other parts of the country was stopped at a police sentry in Navathkuli, an entry point to Jaffna. A policeman stepped in the bus and seized a copy of Puthiya Samathanamam, a Tamil newspaper published by the NSSP. Although none of the police officers at the sentry point spoke Tamil and appeared not to be able to read Tamil, they claimed that the newspaper was illegal and contained anti-Government material. Following a brief discussion, the police allowed the bus to proceed at around 9.45 am. [...]

➤ [UN Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, 31 October 2011- 25 November 2011, 08/12/2011](#)

[...] Human rights defenders, defence lawyers, journalists and other civil society actors at risk

13. The Committee expresses its concern at reports that human rights defenders, defence lawyers and other civil society actors, including political activists, trade unionists and independent media journalists have been singled out as targets of intimidation, harassment, including death threats and physical attacks and politically motivated charges. It regrets that, in many cases, those allegedly responsible for acts of intimidation and reprisal appear to enjoy impunity. The Committee notes with regret that the State party was unable to provide adequate information on the specific incidents about which the Committee had inquired, including the cases of journalists, such as Poddala Jayantha, Prageeth Eknaligoda and J. S. Tissainayagam, and lawyers, such as J.C. Welliamuna and Amitha Ariyaratne. This resulted in a number of submissions to the Committee by some of the individuals concerned containing contradictory information. The Committee is also concerned about information received according to which the Ministry of Defence has published articles on its website implying that lawyers defending individuals are “traitors” to the nation. The Committee is concerned about the fact that one of these articles, entitled “Traitors in Black Cloaks Flocked Together”, included the names and photographs of five lawyers, putting them at of risk of attacks (art. 2, 12, 13 and 16). [...]

➤ [International Federation of Journalists, Web censorship targeting critical voices, 08/11/2011](#)

[...] The International Federation of Journalists (IFJ) condemns the new registration rules introduced by the Government of Sri Lanka (GoSL) for websites hosting any manner of content on the country, which has led to the blocking of several websites for internet users in Sri Lanka. These include Lanka News Web, Sri Lanka Mirror, Sri Lanka Guardian and Lanka Way News.

This latest move follows the persistent curbs imposed on Lanka-e-News, another website that had a wide audience within the country and has been repeatedly targeted in recent times, including in an arson attack in January this year.

An official of Sri Lanka's Media Ministry has been quoted saying that the most recent curbs on websites were ordered because these had persistently been engaged in "character assassination" of the President of Sri Lanka, Mahinda Rajapaksa. [...]

➤ [World Organisation Against Torture, Sri Lanka: Smear campaign and death threats against Mr. Sunanda Deshapriya, 06/10/2011](#)

The Observatory has been informed by reliable sources about the false allegations and death threats made against Mr. Sunanda Deshapriya, a human rights defender, press freedom campaigner and a journalist from Sri Lanka who was the Head of the Free Media Movement before going into exile in 2009[1].

According to the information received, on September 12, 2011, Mr. Sunanda Deshapriya attended a side event at the 18th session of the UN Human Rights Council organised by the Sri Lankan Government. H.E. Mohamed Nasheed, President of the Maldives, a number of Ministers and senior Government officials from Sri Lanka, as well as representatives from a number of diplomatic missions in Geneva, from international human rights organisations and some Sri Lankan human rights defenders participated in the event.

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A few days later, several Sri Lankan media outlets controlled by the State or sympathetic to the Sri Lankan Government, including televisions, radios, newspapers and websites, published an inaccurate account of the event. They falsely claimed that the President of the Maldives accused Mr. Sunanda Deshapriya of having acted “against his country” by supporting the Liberation Tigers of Tamil Eelam (LTTE) at the Human Rights Council and thus betraying his country's interests[2].

However, according to those who attended the event, these accounts were not accurate and they recounted that the Maldivian President had in fact engaged in a cordial conversation with Mr. Sunanda Deshapriya and other Sri Lankan human rights defenders after the meeting. Furthermore, on September 27, the President of the Maldives made a statement in which he expressed his good wishes to all Tamil people and his desire for all people to live peacefully together[3].

Since these false allegations were made in the media, Mr. Sunanda Deshapriya has been receiving death threats through phone calls from hidden numbers and comments made in on line media. The Observatory recalls that Mr. Deshapriya has already been subjected to smear campaigns in the past. In May 2009, following his participation and oral intervention during the 11th Special Session on Sri Lanka at the UN Human Rights Council, he was also subjected to threats, forcing him to go into exile.

The Observatory expresses its deep concern about those false allegations and threats against Mr. Sunanda Deshapriya, and in particular fears for the physical and psychological integrity of Mr. Deshapriya's family who remains in Sri Lanka. [...]

➤ [Amnesty International, Sri Lanka Briefing to Committee Against Torture, October 2011](#)

[...] People abducted, arrested or detained for expressing dissent or criticizing the government or its policies and who are perceived by the authorities or their proxies as political opponents have also been subjected to torture. They include political activists, trade unionists, human rights defenders and independent journalists. The state often fails to properly investigate attacks, including acts of torture perpetrated against journalists. 11 [...]

➤ [World Organisation Against Torture, Annual report on the situation of human rights defenders and on obstacles to freedom of association in 2010, October 2011](#)

In 2010 and until April 2011, freedoms of association, peaceful assembly and expression remained significantly hindered in Sri Lanka, especially in the northern province. Human rights defenders seeking accountability for human rights violations, in particular for alleged violations of international human rights and humanitarian law committed by the Government and the LTTE during the civil conflict that ended in 2009, fighting against corruption or defending environmental rights, were subjected to various acts of intimidation including threats, slandering campaigns, judicial harassment and even forced disappearance and killing. Human rights defenders were also subjected to reprisals when promoting and using the UN human rights system, while failure to investigate prominent cases of assassination and disappearance of human rights defenders further contributed to an environment of fear and silence. [...]

Freedom of opinion and expression continued to face significant constraints in 2010-2011, particularly following the January 2010 presidential election, when several journalists were detained and questioned and news websites were blocked. In particular, print and online media outlets that criticised the Government, its policies, the President or the Defence Minister Mr. Gotabhaya Rajapakse, the President's brother, were subject to harassment and reprisals<sup>4</sup>. In addition to the intimidation, threats and smear campaigns targeting opposition news media, employees of Stateowned media outlets also suffered severe consequences for protesting against Government control of their editorial policies as well as from the misuse of State media resources during the presidential election campaign in January 2010. Dozens of employees were fired, suspended or threatened<sup>5</sup>. [...]

➤ [International Crisis Group, Reconciliation in Sri Lanka: Harder Than Ever, 18/07/2011](#)

[...] 1. Repressing dissent

A core component of governance under the Rajapaksas has been constant pressure on critical media outlets and other civil society actors. [...] A main target since the war's end has been the online news website LankaeNews, a frequent regime critic and supporter of former army commander and presidential candidate Sarath Fonseka. The government has detained and prosecuted Fonseka for various offences – using military and emergency laws – since he lost the election to President Rajapaksa in January 2010.<sup>128</sup>

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Two days before that election, Prageeth Eknaligoda, a writer and cartoonist for LankaeNews and supporter of his campaign, disappeared.

He has not been seen since, and there has been no serious investigation. In January 2011, the LankaeNews offices were burned down in an arson attack, shortly after publication of an article critical of testimony given by the president's defence secretary brother, Gotabaya, in Fonseka's trial. Its news editor was arrested in March for allegedly threatening people connected to a suspect in the arson; he was later released on bail. He and other LankaeNews employees were threatened and called "Sinhala Tigers". Another of its journalists was arrested in April for insulting a magistrate in an erroneous article, resulting in the website's temporary suspension.<sup>129</sup> [...]

Excerpt from the December 2011 OGN

3.8.19 Conclusion. Applicants perceived to be active or influential in opposition to the Sri Lankan Government may be at risk of persecution by the state. Given the tight control the government has over its entire territory, internal relocation is unlikely to avoid such risk. Case owners must be satisfied that individuals claiming persecution on this basis are able to provide sufficient detail to demonstrate that they will be known to the authorities as having been, or perceived to have been, engaged in such activities

It is considered that the *Conclusion* for this category of claimant is not fully consistent with both the COI included in the OGN, nor with that available in the public domain. As detailed above, the COI supports the contention that journalists are likely to be at risk of persecution in Sri Lanka.

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### 3.9 Prison Conditions

Excerpt from the December 2011 OGN

3.9.8 Conclusion Overcrowding and unsanitary conditions which amount to degrading treatment for 'ordinary' detainees have been recorded in some prison facilities and case owners should therefore consider carefully whether the threshold is likely to be breached in individual cases, taking into account any objective material available on potential places of detention. Those perceived to be connected to the LTTE, both men and women, and held in rehabilitation camps, prisons or detention centres may be at heightened risk of ill-treatment and torture.

It is considered that the above conclusion is not fully representative of either the COI included in this section of the OGN, nor with that available in the public domain. With respect to the treatment of 'ordinary' detainees, the above conclusion is based on overcrowding and unsanitary conditions and fails to refer to the large number of criminal suspects that have died in custody or the widespread torture that is committed in detention facilities against 'ordinary' detainees as is reported in the public domain. This *Conclusion* of the OGN fails to incorporate or refer to the COI included in the *Torture/ ill-treatment* sub-section of the OGN which begins at paragraph 3.6.11 which also documents deaths in custody and that the police and security forces commit torture against detainees with impunity. The following COI supports the position that ordinary criminal detainees are at risk of torture in Sri Lanka:

- [Human Rights Watch, World Report 2012, 22/01/2012](#)  
[...] The Prevention of Terrorism Act gives police broad powers over suspects in custody. Sri Lanka has a long history of torture by the police forces, at times resulting in death. [...]
  
- [UN Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, 31 October 2011- 25 November 2011, 08/12/2011](#)  
[...] Coerced confessions  
11. While noting the clarification given by the State party in respect of the inadmissibility of evidence obtained through torture under the Evidence Ordinance Act 1985, the Committee remains concerned about the fact that the PTA allows all confessions obtained by police at or above the rank of Assistant Superintendent of Police (ASP) to be admissible (sect. 16) placing the burden of proof on the accused that a confession was obtained under duress (sect. 17(2)). The Committee is also concerned at reports that in most cases filed under the PTA the sole evidence relied upon is confessions obtained by an ASP or an officer above that rank. The Committee further notes with concern reports documenting individual cases of torture and ill-treatment where the victims were allegedly randomly selected by police to be arrested and detained for what appears to be an unsubstantiated charge and subsequently subjected to torture or ill-treatment to obtain a confession for those charges (art. 2, 11, 15 and 16) [...]  
Conditions of detention in police stations and prisons  
14. The Committee is concerned at the deplorable levels of overcrowding and poor conditions prevailing at police stations and prisons, especially the lack of hygiene, inadequate medical care, the non-separation of convicted and remand prisoners and the failure to keep adult detainees and juvenile offenders separate, as reported by the Special Rapporteur on the question of torture (A/HRC/7/3/Add.6 and A/HRC/13/39/Add.6). In this respect, the Committee regrets the absence of information provided by the State party on measures taken to improve conditions of detention for those held on remand and for convicted persons (arts. 11 and 16). [...]  
Deaths in custody  
15. The Committee is concerned at reports from non-governmental organisations on deaths in custody, including police killings of criminal suspects in alleged staged "encounters" or "escape" attempts.<sup>2</sup> The Committee notes with concern that the State party only reported two cases of death in custody, where the cause of death was determined to be suicide, for the entire period 2006-2011, while for a similar period between 2000-2005 the State party had reported in its core document approximately 65 annual deaths in custody from all causes (HRI/CORE/LKA/2008, p. 87). [...]

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- [Amnesty International, Sri Lanka Briefing to Committee Against Torture, October 2011](#)

[...] Confessions are routinely extracted under torture by the police in order to “solve” cases. The police often extract confessions and then use prolonged administrative detention to investigate individuals for whom they lack sufficient evidence to charge. [...]

Torture and other ill-treatment of criminal suspects by the police are also common. Over the years Amnesty International has documented a wide variety of methods used by Sri Lankan security officials to torture and otherwise ill-treat detainees in their custody. Common methods include beatings with boots or blunt objects, electric shock, sexual assault (including rape) and sexual humiliation; suspension; and application or forced inhalation of irritating or volatile substances, such as chilli powder or petrol fumes. In 2010 alone at least ten criminal suspects reportedly died in police custody in suspicious (and remarkably similar) circumstances. In several cases police claimed that the victim was taken from the police station to identify a weapons cache, attempted to escape, and was shot. 8 On 3 October 2011, Lalith Susantha, a suspect arrested in connection with the death of a policeman in Moratuwa drowned in Bolgoda Lake after police officers allegedly took him by boat to an island in the lake to reveal the location of weapons used in the murder.<sup>9</sup>

Several Sri Lankan organizations monitor police torture, but their reporting has had little apparent impact in increasing accountability or reducing torture incidents. They have, however, been successful in bringing some cases before the Supreme Court arguing that the victim’s fundamental rights under the Constitution had been violated. Some complainants have secured monetary compensation from the state; although the amounts are usually small.<sup>10</sup> [...]

RISK OF TORTURE FOR PERCEIVED OPPONENTS OF THE GOVERNMENT

People abducted, arrested or detained for expressing dissent or criticizing the government or its policies and who are perceived by the authorities or their proxies as political opponents have also been subjected to torture. They include political activists, trade unionists, human rights defenders and independent journalists. The state often fails to properly investigate attacks, including acts of torture perpetrated against journalists. <sup>11</sup> [...]
- [JOINT ALTERNATIVE REPORT from the Sri Lankan NGO Collective to the Committee Against Torture, 14/10/2011](#)

Custodial deaths

97. According to media reports there have been nine deaths in custody in the year 2011 and 96 cases of torture.<sup>62</sup> No legal and administrative action regarding the same has been undertaken.
- [Tamil Information Centre’s submission to the Committee Against Torture on Sri Lanka, October 2011](#)

[...] 1.2 Conditions in detention

Conditions in some military and police places of detention in which people detained under the PTA are held are so appalling as to amount to cruel, inhuman and degrading treatment. People providing testimony on their detention by both the military and the police describe being kept for long periods of time in bare rooms with minimal or no furniture, often without toilet facilities, meaning that detainees must defecate and urinate on the floor, in shared cells as well as individual.<sup>3</sup> Food is often insufficient or not provided for days at a time, and water given to detainees has been reported to be dirty, or withheld until they comply with interrogation. This treatment is often in parallel to the physical methods of torture described. [...]
- [Asian Human Rights Commission, Police Torture Cases Sri Lanka 1998-2011, June 2011](#)

[...] Introduction

The Asian Human Rights Commission (AHRC) has compiled a report of 1500 cases of police torture in Sri Lanka between 1998 and 2011. This particular report summarizes 323 of the most serious cases of torture. The most notable finding of this report is that almost all of the victims whose cases were summarized were randomly selected by the police to be arrested and detained for a fabricated charge. Perhaps the most shocking aspect of the criminal justice system in Sri Lanka is the overwhelmingly large number of charges which are fabricated by the police on a daily basis. Torture is used to obtain a confession for these fabricated charges. [...]

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## 2.4 Internal Relocation

The Sri Lanka OGN focuses on the 'relevance' analysis of internal relocation and does not address the 'reasonableness' analysis of internal relocation<sup>1</sup>:

### Excerpt from the December 2011 OGN

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

2.4.3 The law grants every citizen "freedom of movement and of choosing his residence" and "freedom to return to the country." In practice, however, the government restricted this right on multiple occasions. The additional police and military checkpoints on travellers from the north and the east and on movement to and in Colombo remained in effect. The number of formal, stationary checkpoints declined from the previous year, in particular in Colombo. Many observers noted an increase in temporary, roving checkpoints, however, especially at night in Colombo.<sup>6</sup>

2.4.4 Security forces at army checkpoints in Colombo frequently harassed Tamils. Both the government and the TMVP continued to operate checkpoints in the east that impeded the free movement of residents, especially Tamils. The government no longer restricted travel by Sri Lankan citizens on the A-9 highway leading north from Vavuniya to Jaffna.<sup>7</sup>

2.4.5 The government did not expel citizens from one part of the country to another, nor did it forcibly exile any citizens abroad, but it allowed citizens to leave the country under self-exile unless they were accused of breaking the law. More than a dozen journalists, having received physical threats, were in self-exile due to safety fears.<sup>8</sup>

2.4.6 Careful consideration must therefore be given to any place of proposed internal relocation and how it will be accessed, taking account of the latest information about the security situation. A Country of Origin Information request should be submitted to the Country of Origin Information Service if more information is needed.

Whilst individualised research specific to a claimant's profile and to the proposed place of internal relocation is required, the current UNHCR Eligibility Guidelines on Sri Lanka identify a number of issues that need to be taken into account when assessing the possibility of internal relocation which it may be useful to base COI research on:

➤ [United Nations High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, 05/07/2010](#)

B. Internal Flight or Relocation Alternative

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

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

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<sup>1</sup> For further information on these analyses see [UNHCR, Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, 23/07/2003](#)



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### Useful sources to consult on the situation for internally displaced persons in Sri Lanka

Source	Type of source	Website's search function
<a href="#">Internal Displacement Monitoring Centre (IDMC) Sri Lanka country page</a>	<p>The IDMC is an international body which monitors conflict-induced internal displacement worldwide. Its country pages include:</p> <ul style="list-style-type: none"> <li>○ Country statistics</li> <li>○ Maps</li> <li>○ Internal Displacement Profile</li> <li>○ IDP News alert</li> <li>○ Key documents; news and reports from other organisations on the situation and treatment of IDPs and returnees.</li> <li>○ The Sri Lanka Country Profile was last updated in January 2011</li> </ul>	<ul style="list-style-type: none"> <li>● Country and thematic pages</li> <li>● Advanced search function which allows for: <ul style="list-style-type: none"> <li>○ BOOLEAN searches (AND, OR, NOT)</li> <li>○ Searches for phrases (“...”)</li> <li>○ It is not possible to search within particular time frames</li> </ul> </li> </ul>
<a href="#">Relief Web Sri Lanka country page</a>	<p>Relief Web is a database of reports from international and non-governmental organizations, governments, research institutions and the media for news, reports, press releases, appeals, policy documents, analysis and maps related to humanitarian emergencies worldwide. It provides:</p> <ul style="list-style-type: none"> <li>○ In-depth profiles, updates and reports on countries and disasters</li> <li>○ Maps</li> <li>○ Database of who's reporting</li> </ul>	<ul style="list-style-type: none"> <li>● Country and thematic pages</li> <li>● Advanced search function which allows for: <ul style="list-style-type: none"> <li>○ BOOLEAN searches (AND, OR, NOT)</li> <li>○ Searches for phrases (“...”)</li> <li>➤ Limits searches by: Country; source; theme; content format; feature; disaster type; vulnerable groups; published date (by month); language</li> </ul> </li> </ul>
<a href="#">IRIN News Sri Lanka Country page</a>	<p>A service of the UN Office for the Coordination of Humanitarian Affairs. It provides:</p> <ul style="list-style-type: none"> <li>➤ Humanitarian news and analysis by country and theme.</li> </ul>	<ul style="list-style-type: none"> <li>● Country and thematic pages</li> <li>● Advanced search function which allows for <ul style="list-style-type: none"> <li>○ Keyword searches (Exact Wording; All the Words; Any Words)</li> <li>○ Limits searches by Services; Country; Theme; Report Type</li> <li>○ Searches within time frames (From: To)</li> </ul> </li> </ul>
<a href="#">AlertNet Sri Lanka pages</a>	<p>Humanitarian news site from Thomson Reuters providing information on natural disasters, conflicts, refugees, hunger, diseases and climate change. Country pages include sections on:</p> <ul style="list-style-type: none"> <li>○ Breaking news</li> <li>○ Aid agency news feed</li> <li>○ In detail</li> <li>○ Timeline</li> <li>○ Links</li> <li>○ News</li> </ul>	<ul style="list-style-type: none"> <li>● Country page</li> <li>● Advanced search function which allows for: <ul style="list-style-type: none"> <li>○ Keyword search</li> <li>○ Searches limited by source; content partner; aid agency; country; topic; sub-topic; crisis and by time frame</li> <li>○ Search results can be organised by date</li> <li>○ Searches within time frames (From: To)</li> <li>○ BOOLEAN searches (AND, OR, NOT, ALL)</li> </ul> </li> </ul>

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<p><a href="#">The ICRC Sri Lanka country page</a></p>	<p>The International Committee of the Red Cross Sri Lanka country page includes sections on:</p> <ul style="list-style-type: none"> <li>○ Latest News</li> <li>○ Highlights</li> <li>○ Annual report</li> </ul>	<ul style="list-style-type: none"> <li>● Country page</li> <li>● Advanced search function which allows for: <ul style="list-style-type: none"> <li>○ Keyword searches (Exact Wording; All the Words; Any Words)</li> </ul> </li> </ul>
<p><a href="#">UNHCR Sri Lanka country page</a></p>	<p>UNHCR country pages provide:</p> <ul style="list-style-type: none"> <li>○ Country Operations Profile</li> <li>○ Statistical snapshot</li> <li>○ Latest news</li> <li>○ UNHCR fundraising reports</li> <li>○ Background, analysis and policy</li> <li>○ Statistics</li> <li>○ Maps</li> <li>○ UNHCR Partner Directory</li> </ul>	<ul style="list-style-type: none"> <li>● Country page does not have a search function</li> <li>● UNHCR home page has an advanced search function which allows for : <ul style="list-style-type: none"> <li>○ BOOLEAN searches (AND, OR, NOT, ALL)</li> <li>○ Keyword by title</li> <li>○ Limits searches by category, country of origin, country of asylum</li> <li>○ Searches within time frames</li> </ul> </li> </ul>
<p><a href="#">International Crisis Group, Sri Lanka pages</a></p>	<p>The International Crisis Group is an independent, non-profit, non-governmental organisation committed to preventing and resolving deadly conflict. It provides information on Sri Lanka through:</p> <ul style="list-style-type: none"> <li>○ Crisis Watch- a 12-page monthly bulletin designed to provide a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.</li> <li>○ Recent reports include: <ul style="list-style-type: none"> <li>- Women’s insecurity in the North and the East, 20<sup>th</sup> December 2011</li> <li>- Reconciliation in Sri Lanka: Harder than Ever, July 2011</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Simple search function which allows for keyword searches only</li> </ul>
<p><a href="#">TamilNet</a></p>	<p>TamilNet is an independent and not-for-profit newswire service that provides up to date news with Tamil perspective on issues concerning Tamil people in the island of Sri Lanka. TamilNet features News Updates, News Features, Interviews and Photo Features.</p>	<ul style="list-style-type: none"> <li>● News items are stored in reverse chronological order.</li> <li>○ Simple search function which allows for keyword and BOOLEAN searches (AND, OR, NOT, ALL) and</li> <li>○ Searches for phrases (“...”)</li> </ul>

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## Lesbians, gay men, bisexual, transgender and intersex (LGBTI) persons

This main category of claim, which was previously included in OGNs on Sri Lanka, has been omitted from the current OGN. COI available in the public domain continues to report that LGBT persons face discriminatory treatment at the hands of family members and the wider community, as well as harassment and acts of violence by the authorities, to whom they therefore cannot turn for effective protection. The following sources document such practices:

➤ [Immigration and Refugee Board of Canada, Sri Lanka: Treatment of sexual minorities, including legislation, state protection, and support services, 13/01/2012](#)

Homosexual acts are illegal in Sri Lanka (EQUAL GROUND 7 Dec. 2011; ILGA May 2011, 9, 43; US 8 Apr. 2011, Sec. 6). Article 365 of the Sri Lankan Penal Code criminalizes "carnal intercourse against the order of nature" and provides for a penalty of up to ten years in prison (Sri Lanka 1885, Art. 365; see also CHRI n.d. and ILGA n.d.). In its country survey for Sri Lanka, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) explains that Article 365 "is understood to prohibit anal intercourse ..." (ibid.). Article 365A of the Penal Code prohibits "public and private acts of gross indecency" between two people, which may be punished by a fine or up to two years imprisonment (Sri Lanka 1885, Art. 365A; see also CHRI n.d. and ILGA n.d.). According to ILGA, Article 365 applies only to men, while Article 365A applies to both men and women (ILGA n.d.). A shadow report prepared for the United Nations (UN) Committee on the Elimination of Discrimination Against Women by the Women's Support Group (WSG), a Sri Lankan non-governmental organization (NGO) that advocates for lesbian and bisexual women and transgendered persons (SALGBT n.d.b), states that Article 365A was amended in 1995 to specifically criminalize sexual activity between women (WSG Jan. 2011, 2).

[...] Homosexuality is reportedly marginalized within Sri Lankan society (*Lakbima News* 4 Dec. 2011; Xinhua 21 Sept. 2011). According to the Xinhua news agency, homosexuality is a "taboo" subject (ibid.). An article on the English website of Sri Lankan newspaper *Lakbima News* states that "many" gay men and women remain closeted due to the "stigma" associated with homosexuality (4 Dec. 2011). In correspondence sent to the Research Directorate, the Executive Director of EQUAL GROUND, an advocacy and support group for the Sri Lankan LGBT community (*Daily Mirror* 25 June 2010), stated that due to the efforts of organizations like hers, LGBT people have achieved greater visibility in Sri Lanka, which has led to greater acceptance, but which has also been paralleled by an increase in homophobia (EQUAL GROUND 7 Dec. 2011). Sources report that lesbian, gay, bisexual and transgender people may be subject to violence (ibid.; US 8 Apr. 2011, Intro.; WSG Jan. 2011, 5). According to a summary prepared in 2008 by the UN Office of the High Commissioner for Human Rights for Sri Lanka's universal periodic review, a submission by EQUAL GROUND to the UN Human Rights Council stated that violence against the Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning (LGBTIQ) community included death threats and extrajudicial killings (UN 3 Apr. 2008, para 12). Several sources indicate that crimes committed against members of the LGBT community are underreported (EQUAL GROUND 7 Dec. 2011; US 8 Apr. 2011, Sec. 6; WSG Jan. 2011, 3). Two sources state that this underreporting of crimes by LGBT people is due to their fear of being further victimized by police (EQUAL GROUND 7 Dec. 2011; US 8 Apr. 2011, Sec. 6).

[...] Members of the LGBT community reportedly face discrimination (EQUAL GROUND 7 Dec. 2011; US 8 Apr. 2011, Intro.; WSG Jan 2011, 3). According to a summary by the Office of the UN Commissioner for Human Rights of a submission by more than thirty Sri Lankan groups and individuals to the UN Human Rights Council, "LGBTIQ individuals are denied access to health services, education and employment and the ability to participate in social and public life" (UN 3 Apr. 2008, Para. 12). According to the EQUAL GROUND executive director, members of the LGBT community "lose their jobs, are kicked out of their homes [and] have difficulty accessing health care, housing, education and justice" (EQUAL GROUND 7 Dec. 2011).

[...] According to two sources, the criminalization of homosexuality also impedes HIV prevention and treatment (*Lakbima News* 4 Dec. 2011; *Time* 2 July 2009).

Cultural, socio-economic and geographic differences

The Executive Director of EQUAL GROUND expressed the opinion that LGBTIQ people in the Tamil or Muslim communities may face greater difficulties because these groups are "ultra conservative" (EQUAL GROUND 7 Dec. 2011). However, she also noted that the LGBTIQ community is "increasingly" threatened

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by Sinhalese Buddhist nationalists, among others, who claim that "homosexuality is a western value which erodes Sri Lankan culture, morals and family values" (ibid.). The Executive Director also provided the following information regarding socio-economic and regional differences within Sri Lanka with regard to the LGBT community:

[T]here is a huge difference in how people are treated based on their socio-economic status. LGBTIQ persons in the rural areas for example, suffer enormous hardships - stigma and discrimination is rife - and they cannot be openly gay or enjoy a normal same sex relationship.

Most rural gay men especially, migrate to urban areas where there are more opportunities for them to meet others who are like them and have relationships, albeit on the down low. (ibid.)

The Xinhua news agency states that most homosexuals in Sri Lanka live in the larger cities (21 Sept. 2011). In further correspondence with the Research Directorate, the Executive Director of EQUAL GROUND stated that "a significant number of LGBT persons" live in Colombo (EQUAL GROUND 12 Dec. 2011). The Executive Director added that acceptance levels in Colombo were "slightly better" than those of other areas, but that "[i]n most places in Sri Lanka, marginalization and homophobia are the norm" (ibid.).

Lesbian and bisexual women

According to the EQUAL GROUND executive director, lesbian and bisexual women "are the most marginalized" among the LGBT community "and are very invisible, even in urban areas" (ibid. 7 Dec. 2011). In observations regarding Sri Lanka, the UN Committee on the Elimination of Discrimination Against Women expressed concern that, due to the criminalization of homosexuality in Sri Lanka, women in same-sex relationships are excluded from legal protection and are subject to arbitrary detention (UN 4 Feb. 2011, 5). A report on the situation of lesbian and bisexual women in Sri Lanka produced by EQUAL GROUND, based on research conducted between April 2010 and June 2011, states that lesbian and bisexual women are more vulnerable than gay and bisexual men because women are not seen as equal (2011, 5). According to the report, lesbian and bisexual women are ostracized by their family and society and some have been driven to suicide (ibid.). The report adds that lesbian and bisexual women are often subject to a combination of homophobic violence, gender-based violence, and domestic violence (ibid., 7). According to the report, lesbian and bisexual women face the greatest risk of violence from their parents, siblings and relatives, who attempt to "institutionalize these women, restrict them from leaving the home, withdraw economic and other necessary support, arrange unwanted marriages and express other forms of physical aggression" (ibid., 8). The report also notes that these women are dependent on their families and some may feel powerless in confronting violent threats by their family members or threats to report them to the police (ibid., 5)

Transgender people

Sources report that it is difficult to amend the sex classification on official documents (US 8 Apr. 2011, Sec. 6; WSG Jan. 2011, 5). According to sources, individuals must first have their sex on identity documents changed before going through sex-reassignment surgery (ILGA 10 Apr. 2011; WSG Jan. 2011, 5).

[...] State protection

Sources report that there is no legal protection or recourse for the LGBT community in Sri Lanka (EQUAL GROUND 7 Dec. 2011; WSG Jan. 2011, 3 US 8 Apr. 2011, Sec. 6). Two sources explain that the existence of the Penal Code's legal provisions regarding homosexuality may lead to "harassment" of members of the LGBT community by police officers (ibid. Sec. 6; ILGA n.d.). According to the EQUAL GROUND executive director,

the existence of the Penal Code criminalizing same sex relationships gives the Police [...] impunity to continue harassing and marginalizing the LGBTIQ community. LGBT persons are routinely arrested, sometimes for just walking on the street, and are subject to blackmail, extortion, physical and mental violence, rape etc. LGBTIQ persons don't report crimes against them because they are further marginalized and victimized when the police get to know they are Queer. (EQUAL GROUND 7 Dec. 2011)

Other sources similarly indicate that members of the LGBT community are subject to assault and extortion by police officers (US 8 Apr. 2011, Sec. 6; CHRI n.d.).

[...] The summary of EQUAL GROUND's submission to the UN Human Rights Council states that there was state-sanctioned hate speech directed towards the LGBT community (UN 3 Apr. 2008, para. 12). In June 2010, an article in the Sri Lankan daily newspaper the *Daily Mirror* quoted the Sri Lankan Prime Minister as stating it was "not wrong" for LGBT people "to seek rights" and that he was willing to listen to what they wanted (25 June 2010). However, according to the WSG shadow report, LGBT support organizations

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received no response from the Prime Minister after sending a joint letter asking for a meeting (WSG Jan. 2011, 2).

Support services

Several LGBT NGOs exist in Sri Lanka (US 8 Apr. 2011, Sec. 6; CHRI n.d.; SALGBT n.d.a). According to the EQUAL GROUND executive director, LGBT organizations do not receive any financial assistance from Sri Lankan government sources directly or indirectly (13 Dec. 2011).

[...] In addition to the aforementioned EQUAL GROUND and the WSG the Diversity and Solidarity Trust (DAST), a group that caters to gay men and male-to-female transgenders, is also present in Sri Lanka (IDAHO n.d.). Another group, Companions on Journey, is no longer active according to the EQUAL GROUND executive director (13 Dec. 2011). EQUAL GROUND, which is based in Colombo, has been in operation since 2004, organizes community events, runs a resource centre and operates a telephone counselling service (EQUAL GROUND 1 Feb. 2011). The Support Group was formed in 1999 and offers peer support services and a drop-in centre in Colombo (SALGBT n.d.b). The WSG also liaises with other domestic and international human rights groups (ibid.). The organization's website was not active at the time of the writing of this Response. According to an article on the ILGA website, DAST provides a sexual reassignment surgery support system to assist transgender persons going through the process (ILGA 10 Apr. 2011). According to the article, the support system is highly confidential "due to the possible threats from law enforcement authorities" (ibid.).

[...] In particular, Pride events are held every year (Groundviews 9 July 2010; ILGA n.d.). However, ILGA notes that Pride events are held "without parades or demonstrations," noting that "[a] public event involves flying rainbow kites in the park" (ibid.). According to the EQUAL GROUND executive director, while Pride events have been peaceful for the most part, there have been some incidents that had to be defused (EQUAL GROUND 13 Dec. 2011). However, the Executive Director added that no police protection would have been available if needed (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate. [...]

➤ [LGBT Asylum News/LGBT Sri Lanka, Video: Persecution of gay people in Sri Lanka, 18/01/2012](#)

"Saman" is a graduate student in Sri Lanka who was doing research on 'safer sex' for his thesis. He told me that while he was working in the southern city of Galle, the local police detained and tortured him assuming he was gay. While in detention he witnessed how the Sri Lankan police discriminated against other allegedly gay men who were locked up in jail. Fearing retribution, Saman did not want to show his face or use his real name in recording this experience. Under the Sri Lankan penal code Section 365 A, homosexual acts are prohibited and "violators" face a penalty of up to 10 years in prison. While few cases have ever been prosecuted, the threat of public shame and blackmail looms large for Sri Lanka's gay community and this "dead letter" has become a greater threat in light of pervasive police corruption. This is only one example of the codified homophobia in Sri Lanka and its oppressive side-effects. Similar incidents are still happening to LGBT individuals in Sri Lanka on a regular basis. These incidents include, but are not limited to blackmail, violent threats, employment discrimination, and rejection by friends, family, the police, and society at large. Cases of physical assault, harassment, and detention are not uncommon. Regardless, these incidents are more or less ignored by the Sri Lankan media; even when they are reported, their connection to homophobia is rarely articulated. Of course, many LGBT individuals are happy to keep these incidents quiet, fearing that they would be subject to further attacks if they were outed. Both gay and straight Sri Lankans hold a negative view of homosexuality.

➤ [LGBT Asylum News/Anonymous, Video: Sri Lankan gay activist speaks out, 26/11/2011](#)

I am recording this video because I was arrested and put in jail two times in Sri Lanka for being a gay person. I am not mentioning my name here or either showing my face because I have to go back and forth to Sri Lanka to visit my parents. My parents do not allow my sexuality and I am not out to them about it. I am safe and living my gay life happily because now I live in outside of my country. I know lot of my fellow gay brothers and sisters are suffering in Sri Lanka because they were persecuted by Sri Lankan police and not getting any help from the Sri Lankan government either. Not only that, they were not accepted by the traditionally thinking society in Sri Lanka. Homosexuality is a criminal offense according to the penal code 365A in Sri Lanka. That you could be arrested and put in jail for up to 12 years. This is only two of many persecution incidents happened to me in Sri Lanka for being a gay person. Also, there are so many other gay brothers and sisters who have had or still having similar kind of persecutions or even worse incidents

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in Sri Lanka because of their sexuality. Most of these incidents are undocumented as everybody is scared to come out and tell about it.

➤ [ILGA, State-sponsored Homophobia, May 2011](#)

[...] Sri Lanka

Male/Male Illegal Female/Female Illegal

Penal Code of 1883 No 2 (Cap. 19) 201

Article 365 – “Voluntarily carnal intercourse with man, woman or animal against the order of nature - imprisonment for a term which may extend ten years.”

Article 365A (as introduced by the “Penal Code (Amendment) Act, No. 22 of 1995”)202

“Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of any act of gross indecency with another person, shall be guilty of an offence and shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both and where the offence is committed by a person over eighteen (18) years of age in respect of any person under sixteen (16) years of age shall be punished with rigorous imprisonment for a term not less than 10 years and not exceeding 20 years and with a fine and shall also be ordered to pay compensation of amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such a person.”

➤ [U.S. Department of State, 2010 Human Rights Report: Sri Lanka, 08/04/2011](#)

[...] Section 6 Discrimination, Societal Abuses, and Trafficking in Persons Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

The law criminalizes homosexual activity but was not officially enforced. Some NGOs working on LGBT problems did not register with the government. In recent years human rights organizations reported that, while not actively arresting and prosecuting those who engaged in LGBT activity, police harassed and extorted money or sexual favors from those persons and assaulted gays and lesbians in Colombo and other areas. This led to many incidents of crimes against members of the LGBT community going unreported. There were LGBT organizations, and several events were held throughout the year. In addition to pressure, harassment, and assaults by police, there remained significant societal pressure against members and organizations of the LGBT community. There were no legal safeguards to prevent discrimination based on sexual orientation or gender identity. There were reports that persons undergoing gender reassignment procedures had difficulty in amending government documents to reflect those changes. [...]

➤ [Women's Support Group \(Sri Lanka\), The Status of Lesbians, Bisexual Women and Transgendered Persons in Sri Lanka \(NGO Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women\), 10/01/2011](#)

[...] Context and Background

As the Sri Lanka NGO Shadow Report prepared by the Women and Media Collective points out, the current trend adopted by the Ministry of Women’s Affairs has been to view women vis-a-vis their reproductive roles as daughters, mothers and wives, thereby disregarding the choices made by women in terms of their sexual orientation and gender identity and gender expression. Therefore women who do not fall within the heterosexual matrix are excluded from all women related development programmes that are undertaken by the government. Section 365A of the Penal Code (enacted in 1883) criminalises sexual activity between two consenting adults of the same sex. In 1995, the government amended the word ‘males’ in the original text to ‘persons’, thereby criminalising same-sex sexual activity between women as well.

[...] Article 1: Definition of Discrimination

Chapter 3 of the Constitution of Sri Lanka spells out the fundamental rights of citizens. Within Article 12 (2) is enshrined the principle of Non- Discrimination. It reads as follows: “No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex political opinion, place of birth or any such grounds”. Regrettably this provision does not explicitly protect persons of diverse sexual orientation or gender identities from being discriminated against. It must be noted that de facto discrimination against all women can only be eliminated when the principles of nondiscrimination and equality are guaranteed



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without distinction on the basis of sex, gender identity, gender expression, or sexual orientation, among other factors. Additionally, in other circumstances, aggrieved parties have recourse to the possibility of making an application before the Supreme Court, on the basis of their fundamental rights being violated. However since it has not been spelled out that sexual orientation and gender identity is a basis for the principle of non-discrimination to be upheld, LBT persons in Sri Lanka have no form of redress. The lack of protection of the right to equality and non discrimination for members of LBT communities in Sri Lanka leads to stigma and discrimination against them as well as to their being rendered invisible in the eyes of society and of the law. This factor plays a role in deterring lesbian, bisexual and transgendered people from reporting acts of discrimination, abuse and violence that they face to the relevant authorities.

Article 2: Measures to be taken to Eliminate Discrimination and General Recommendation No. 28 on Article 2

Section 365a of the Penal Code of Sri Lanka is understood as criminalizing consensual same-sex sexual activity even in private spaces. Homosexuality therefore is seen as a criminal offense. This provision discriminates against lesbian, bisexual and transgender men and women by denying them their right to life, right to equality and right to choice. To date although there have been no convictions under this provision of the Penal Code, complaints have been received by police stations citing this provision. This criminalization paves the way for police and anti-gay groups to brand all lesbian, bisexual, transgendered persons as 'perverts' and criminals. The fear of being apprehended and identified as a person of non-normative sexual behavior or practice leads to a cycle of silence by members of the LBT community, by their families and friends and by the society as a whole and makes them vulnerable to a range of abuses including extortion, intimidation, unlawful arrest and detention, harassment and torture. Homophobic and transphobic articles repeatedly appear in the media, especially the print media, including in some State owned newspapers and in newspapers that follow State policy. These articles constitute a means by which society strengthens its resistance to recognition of LBT communities and continues to isolate, ridicule and justify acts of violence on members of the LBT communities<sup>7</sup>. With regard to women's sports teams, there have been unofficial reports where women who are key players in the National team have lost their positions once it has been speculated that they are lesbians. In this sense, there is direct discrimination which impedes the full enjoyment of the right to equality by specific categories of women in Sri Lanka who face discrimination due to their sexual orientation and gender identity/expression. .

Article 5: Sex Roles and Stereotypes

Sex Roles and Stereotypes

Lesbians, Bisexual women and Transgendered persons often grapple with issues relating to identity. Having been socialized within a hetero-patriarchal society that only sanctions the expression of biologically dictated gender identities, non-conforming individuals often resort to suicide and self harm due to the harassment and humiliation they face. While there have been a number of newspaper reports of joint suicides by two women, at least on two occasions, suicide notes had been left behind expressing their inability to face a life of separation. In such cases, it can be concluded that the women committed suicide due to that fact that their same-sex relationship was not recognized by society<sup>8</sup>. In the past there have been several cases of 'impersonation' and 'misrepresentation' brought to the courts in which women who have been 'disguised' as men have been 'discovered' and their 'true sexual identity' exposed to the public. Similarly, transwomen have also been arrested for 'misleading the public.'<sup>9</sup>

Dress Codes

In most government institutions since there is no formal document on dress codes, on many occasions, there is an informal understanding reading dress codes which apply only to women employees. In many cases, women are expected to wear the sari and are frowned upon if they do not conform to this dress code. Women who are part of the State Security Forces are required to wear a fitting skirt and blouse as their uniform. They are not given the option of wearing trousers, and have made unofficial complaints about hindrances to movement in the job they are supposed to perform

Article 6: Trafficking and Prostitution The Vagrancy Ordinance of 1842 remains in place and continues to give authorities the power to detain people who they consider to be loitering in public; this provision allows for arrest and prosecution of sex workers. The police have the power to determine and interpret the law, and many times the Vagrancy Ordinance is used to wrongfully detain transgendered people, and people of sexual minorities because they appear to look different. In most cases it is those of the lower socio economic status who are the most vulnerable to this form of harassment; women including transwomen are particularly vulnerable to sexual harassment, abuse and mistreatment while in Police custody.

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#### Article 7: Political and Public Life

Transgendered men and women in Sri Lanka are denied the right to recognition by the State due to the fact that there is no structured system which allows transgender men or women to alter the category of 'sex' on their Birth Certificate or National Identity Card. This has been left to the discretion of the medical practitioner who in effect, risks his license if he/she performs sex altering surgery on a client whose birth certificate notes his/her sex at birth. As there is no legal provision to change one's sex, people are advised to first change their birth certificates and only then go through with sex altering surgery; in effect putting the cart before the horse. However, since there are loopholes in the system, on two occasions a transman and a transwoman managed to succeed in changing the sex noted in his/her identity card from female to male/male to female. Nevertheless, it should be noted that the overarching taboo on the subject in law, policy and practice, and the lack of State initiative to recognize the existence of LBT communities in Sri Lanka results in their exclusion from development programmes, for example. This absence and silence strengthens the vulnerability of members of LBT communities to stigma and discrimination, as well as to violence.

#### Article 11: Employment

While some private workplaces may have non-discrimination policies in place, very often this fails to spell out non-discrimination in terms of sexual orientation and gender identity. In the state sector, non-discrimination policies either do not exist or are very rare. For example, the University of Colombo does not have a non-discrimination policy. In the corporate sector, the enactment of a policy on Sexual Harassment is left entirely to the discretion of the companies, and as such no formal uniform policy is adopted across the board. Even in case where companies have taken steps to enact this policy the issues faced by LBT people are invisible and would have to be voiced through the position of being a woman. Transgender persons have spoken of the reluctance of employers to offer them employment. In one case reported to the WSG, a transman had been dismissed from his employment after he had been 'discovered' by his employer. Also with regard to State Security Forces, when the speculation of being lesbian is present, there has been a case where the woman has been intrusively questioned as to what sex acts she performs and consequently her due promotion has been delayed/withheld on "other grounds".

#### Article 12: Healthcare

Within a healthcare system that is blind to the existence of LBT communities, equality of access to healthcare remains denied to these individuals. The lack of awareness regarding the potential health needs of these communities on the side of healthcare providers as well as on the side of members of the LBT community in Sri Lanka means that the silences continue to be reinforced. In particular, the provision of reproductive and sexual health care is designed without taking the specific needs of these communities into consideration. The absence of health care which responds to the needs of persons of different gender identities and the criminalization of same sex orientations render it difficult for LBT persons to access public health services in a manner that is open and informative about their medical and personal histories and that offers them confidential and appropriate healthcare. Criminalization renders lesbian, bisexual and transgender women and men vulnerable to a range of violations of their human rights to health. There have been cases reported where members of these communities have been exploited and have faced abuse by unscrupulous health professionals who take advantage of the discriminatory laws that are in place. Although most higher level health care professionals have been trained on standards of confidentiality, there is little information available on whether lab technicians and assisting nurses and other minor staff are bound to protect the confidentiality of the patient concerned. For example, a woman whose husband tested positive to HIV/AIDS complained that lab technicians had revealed her HIV status to people in her home town who in turn destroyed her house.<sup>10</sup> The absence of state policy towards non-discrimination was amplified in 2007, when Sri Lanka hosted the 8<sup>th</sup> ICAAP Conference (International Conference on AIDS in the Asia Pacific). At the end of the conference, the Minister of Healthcare and Nutrition, Nimal Siripala de Silva in his closing speech remarked, "I don't want people to think I brought all of these people here (for the congress) to promote lesbianism and homosexuality. There are many nice women and handsome men in Sri Lanka," he pointed out. "People in South-east Asia practice good sexual behaviour with single partners. When the western world was living in jungles, we were leading a civilised life."<sup>11</sup> There have also been cases in which families seek assistance from mental healthcare providers to 'cure' persons who manifest 'non-normative tendencies' which results in forced institutionalization, forced psycho therapy, forced medication and even forced confinement. As the existence of transgendered persons in Sri Lankan society is not taken into consideration in designing

healthcare, there is a lack of information on services such as sex reassignment operations by public health providers. In Sri Lanka, health services are provided by public hospitals free of charge or at subsidised rates. However, services on sex reassignment are not made available in these hospitals. Anand Grover, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, has pointed to the impact of the criminalization of private, consensual sexual behaviour between adults on the enjoyment of the right to health. Grover considers the “criminalization of consensual, same-sex conduct between adults, along with criminalization based upon sexual orientation or gender identity, to infringe the enjoyment of the right to health both directly and indirectly.” He further points out that “apart from failing to meet the objectives of criminal law, criminalization encourages violence, abuse and stigmatization, and impairs upon the dignity of individuals and infringes the enjoyment of the right to the health of same-sex communities”<sup>12</sup> Transgender men remain a section of the population most at risk of HIV. Sri Lanka’s report to the United Nations General Assembly Special Session on HIV/AIDs (UNGASS) 2008 – 2009, estimates there to be 35,000-47,000 sex workers in the country and 24,000-37,000 men who have sex with men (MSM)<sup>13</sup>. Since both behaviours are criminalized, access to health care services is severely compromised. An analysis of data from a study of MSM and transgender people in Asia conducted in 2008 concluded that:

- Stigma and discrimination, particularly amongst healthcare providers, is a major disincentive to seek treatment;
- Unethical disclosure of sexuality and/or HIV status by healthcare staff perpetuates distrust in local healthcare infrastructure;
- Strong cultural norms pertaining to sexuality impedes availability of accurate treatment information, creates the fear of disclosure, and an increased chance of social isolation and loss of social support;
- Gender-based discrimination makes treatment access an additional challenge for HIV-positive transgender people<sup>14</sup>.

#### Article 13: Economic and Social Benefits

The inability for Lesbians, bisexual women and transgender persons to register civil partnerships or marriage prevents them from accessing a whole range of benefits that partners of heterosexual marriages enjoy. For example: a) Same-sex partners are denied the right to apply for housing loans due to the fact that their partnership is not afforded due recognition by the State; b) In cases where same sex partners have attempted to rent properties for residence, potential landlords have been reluctant to rent out their premises; c) Provident Funds (State Retirement Pension Fund) can only be accessed either on grounds of marriage or prior to retirement. This is discriminatory towards lesbian, bisexual and transgender men and women as they do not have an option for marriage; d) Adoption of children or even official guardianship is not allowed for partners of same sex relationships; e) A citizen of Sri Lanka is unable to pass on his/her citizenship to his /her same sex partner, and as a result it is not possible for LBT persons to enjoy the economic social and cultural rights that a family is entitled to. f) Recognition of partnership when one of the parties dies intestate - even though partners of same sex relationships have over the years shared common spaces and resources, it is often the case that their shared property is determined as individual possession, so when one partner dies intestate the other is unable to claim this property.

➤ [United Nations High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, 05/07/2010](#)

[...] III. Eligibility for International Protection

[...] Potential Risk Profiles

[...] 5. Lesbian, Gay, Bisexual and Transgender (LGBT) Individuals

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

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membership of a particular social group, i.e. their sexual orientation and/or gender identity, since they do not, or are perceived not to conform to prevailing legal, religious and social norms. Furthermore, the existence of significant criminal sanctions for “homosexual conduct” is likely to impede access to State protection, particularly where persecutory acts are perpetrated by nonState actors such as family or community members. [...]

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