Home Office
UK Border Agency

OPERATIONAL GUIDANCE NOTE

SRI LANKA

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1 Introduction

1.1 This document evaluates the general, political and human rights situation in Sri Lanka and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 This guidance must also be read in conjunction with any COI Service Sri Lanka Country of Origin Information at: http://www.homeoffice.gov.uk/rds/country_reports.html

1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

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

2 Country assessment

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

executive presidency which introduced for the first time elections based on proportional representation.[1]

2.2 Presidential elections on 17 November 2005 resulted in the election of President Mahinda Rajapakse of the United Peoples Freedom Alliance (UPFA) to a six year term (the UPFA is an alliance between the SFLP and the People's Liberation Front - the JVP). The prime minister of Sri Lanka is appointed by the president and on 21 November 2005 Ratnasiri Wickremanayake was sworn-in as prime minister.[2]

2.3 The ethnic conflict in Sri Lanka has been going on for 25 years as the Liberation Tigers of Tamil Eelam (LTTE) fight for an independent homeland. During this period some 70,000 people are estimated to have been killed and some one million displaced.[3] A ceasefire agreement (CFA) was signed in February 2002 by the Government and the LTTE, with a commitment by both sides to find a negotiated solution to the ongoing ethnic conflict.[4] However, fighting continued. In 2004, the 'Karuna Faction' or 'TMVP' broke away from the LTTE. It has since been involved in fighting against the LTTE and is reported to be backed by the Sri Lankan Government. In May 2007, the Karuna Faction/ TVMP group was reported to have become further factionalised when the deputy leader of the Karuna group, Pillayan became involved in a dispute with Karuna. Pillayan subsequently became Chief Minister for the East after the TMVP won the election there.[5] However, Pillayan was reported to have met with Karuna in July 2008 to iron out old differences when both parties agreed that Karuna would maintain his position as leader of the TMVP with Pillayan continuing as deputy leader.[6]

2.4 Fighting intensified in Sri Lanka during 2007 on the ground, at sea and in the air. While the Sri Lankan military made significant gains and demonstrated its force superiority, vulnerabilities were also exposed and exploited by the LTTE. The government made significant gains against the LTTE on the ground in the eastern regions taking control of Batticaloa and Thoppigala on 11 July 2007, signifying the end of LTTE influence in the area.[7]

2.5 In January 2008, the Ceasefire Agreement (CFA) was formally annulled by the Government. The government insisted that there was little to be gained in adhering to an agreement that had been violated persistently by the LTTE.[8] Armed clashes between the LTTE and the government continued and further intensified during 2008. In February, March and April 2008, incidents were particularly reported in the north in the districts of Jaffna, Mannar, Vavuniya and Mullahitivu.[9]

2.6 According to the South Asia Terrorism Portal, the number of killings in Sri Lanka in the two years preceding the ceasefire of February 2002 was 5,973 in 2000 and 1,822 in 2001. Fifteen people were reported killed in 2002; 59 in 2003; 108 in 2004, 330 in 2005, 4,126 in 2006 and 4377 in 2007. The South Asia Terrorism Portal has reported that there were 6199 killings from January 2008 until 21 July 2008[10]

2.7 In August 2005, the Sri Lankan Parliament approved emergency regulations giving power of arrest to members of the armed forces who were required to turn over suspects to the police within 24 hours. The regulations provided for individuals to be detained for up to one

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[1] Foreign and Commonwealth Office (FCO) Country Profile: Sri Lanka
[2] Foreign and Commonwealth Office (FCO) Country Profile: Sri Lanka
[3] Foreign and Commonwealth Office (FCO) Country Profile: Sri Lanka
[4] Foreign and Commonwealth Office (FCO) Country Profile: Sri Lanka
[5] COIS Sri Lanka Country Report June 2008 – Annex C
[6] The Sunday Times – Karuna and Pillayan in 5 hour talks - http://www.sundaytimes.lk/080713/News/timesnews006.html)
[7] COIS Sri Lanka Country Report June 2008 para 3.35
[8] COIS Sri Lanka Country Report June 2008 para 3.35
[9] COIS Sri Lanka Country Report June 2008 – Recent Developments
[10] Asia Terrorism Portal (SATP): 'Fatalities District Wise 2007', 'Fatalities District Wise 2006', 'Fatalities District Wise 2005' & 'Prominent Tamil political leaders assassinated since the Ceasefire Agreement'

year without trial.[11] In response to an attempt to assassinate the defence secretary in December 2006, the government reinstated certain provisions of the pre-CFA Prevention of Terrorism Act (PTA) as an additional emergency regulation giving the security forces broader arrest and detention prerogatives than previously allowed[12]

2.8 According to the USSD, there were credible reports of politically motivated and arbitrary and unlawful killings by government agents during 2007. Extrajudicial killings occurred in Jaffna nearly on a daily basis and were allegedly perpetrated by military intelligence units or associated paramilitaries. Government security forces used the broad 2005 emergency regulations to detain civilians arbitrarily including journalists and members of civil society and were also reported to be implicated in disappearance and abductions. [13]. Human Rights Watch has indicated that about 1000 "disappearances" were reported to the Sri Lanka Human Rights Commission in 2006 and over 300 cases in the first four months of 2007 alone; the majority of which showed involvement by state security forces - army, navy and police.[14]

2.9 The LTTE which maintained sections of the North continued to attack local civilians and engage in torture and arbitrary arrest and detention; denied fair public trials; interfered with privacy; denied freedoms of speech, press, assembly and association and forced recruitment to its ranks including of children.[15]

2.10 While UNICEF noted a significant reduction in reported child recruitment by the LTTE, the LTTE had not complied with the promise to end the use of all minors by the end of 2007. UNICEF reported that the LTTE forcibly recruited (or rerecruited) 160 children during 2007 with an average age of 16 years. At the end of 2007, 205 children remained in LTTE custody, including 1,224 who were recruited as children but were over 18 at the end of 2007.[16] Unlike the LTTE, UNICEF reported that child recruitment by the progovernment Karuna group did not decline. It was also reported that government forces were at times complicit in the recruitment of children. During 2007, UNICEF reported that the Karuna group recruited and rerecruited children for use as child soldiers. At the end of the 2007, 160 children were still serving in the Karuna forces, and 69 who were recruited as children were now over age 18[17]

2.11 Sri Lanka was severely affected by the tsunami on 26 December 2004 which killed some 40,000 people and displaced 400 - 500 thousand people along two thirds of the north-east, south and south-west coastline.[18] Human Rights Watch has reported that the renewal of major fighting in Sri Lanka has resulted in more than 208,000 persons displaced from their homes[19].

3 Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Sri Lanka. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are

[11] USSD 2007
[12] COIS Sri Lanka Country Report June 2008 para 8.15
[13] USSD 2007 Section 1
[14] Human Rights Watch – Recurring Nightmare – March 2008
[15] USSD 2007 Section 1
[16] COIS Sri Lanka Country Report June 2008 para 10.28
[17] COIS Sri Lanka Country Report June 2008 para 10.37
[18] Foreign and Commonwealth Office (FCO) Country Profile: Sri Lanka
[19] Human Rights Watch World Report 2008 Sri Lanka

set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing Credibility in Asylum and Human Rights Claims).

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Instructions on Assessing Credibility in Asylum and Human Rights Claims.

3.5 All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at: http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis.html

3.6 Former members, supporters or opponents of the LTTE fearing reprisals from LTTE

3.6.1 Many applicants will claim asylum based on fear of ill-treatment amounting to persecution at the hands of the LTTE due to their past involvement with, and/or opposition to the mainstream LTTE. Some, particularly those who have aligned themselves with the Sri Lankan army military intelligence units, will state that they are targeted by the LTTE because they are perceived *as* 'defectors', whilst others fear being targeted because of their association with the breakaway 'Karuna' faction of the LTTE or because of their association with or links to the Eelam People's Democratic Party (EPDP). Others express a fear of being attacked by the LTTE in Colombo because they have engaged in, or are perceived by the LTTE to have engaged in, activity which is seen as 'disloyal' to the LTTE**.**

3.6.2 ***Treatment*****:** Fighting between the LTTE and government forces intensified in Sri Lanka during 2007 with an estimated 4,500 fatalities on the ground, at sea and in the air. While the Sri Lankan military made significant gains and demonstrated its force superiority, vulnerabilities were also exposed and exploited by the LTTE. The government made significant gains against the LTTE on the ground in the eastern regions taking control of Batticaloa and Thoppigala on 11 July 2007, signifying the end of LTTE influence in the area.[20] For its part, the LTTE, which maintained control of sections of the north, continued to attack civilians and engage in torture and arbitrary arrest and detention; denied fair, public trials; arbitrarily interfered with privacy; denied freedoms of speech, press, and assembly and association; and forced recruitment, including of children while violating the Ceasefire Agreement. In January 2008, the Ceasefire Agreement was formally annulled by the Sri Lankan government in which it insisted that there was little to be gained in adhering to an agreement that had been violated persistently by the LTTE.[21] Armed clashes between the LTTE and the government continued and further intensified during 2008. In February, March and April 2008, incidents were particularly reported in the north in the districts of Jaffna, Mannar, Vavuniya and Mullahitivu.[22]

3.6.3 Both Amnesty International (AI) and Human Rights Watch (HRW) have highlighted the increase in large scale military operations conducted by the Government and the LTTE and

[20] COIS Sri Lanka Country Report June 2008 para 3.37
[21] COIS Sri Lanka Country Report June 2008 para 3.37
[22] COIS Sri Lanka Country Report June 2008 – Recent Developments

the worsening human rights situation in the country. AI has reported that the range of people being targeted appears to be expanding and that although most of those killed since the LTTE split had clear links to either the LTTE or the Karuna faction, there has been an increase in the number of civilians killed who have little or no evident connection to armed activity. This reportedly includes journalists, academics, teachers and farmers as well as former members of the Tamil armed groups who have not been involved in armed activities for a long time.[23]

3.6.4 In March 2004, the LTTE's eastern commander, Colonel Karuna, broke away from the mainstream LTTE taking with him some 6,000 troops. Much of the breakaway "Karuna/ TMVP" (Tamil National Party) group was wiped out and disbanded during 2004 in a military counter-offensive by the mainstream LTTE. However, it was rebuilt during 2004-05 by Karuna and his close associates, reportedly under the support of the Sri Lankan military. Between late 2006 and early 2007, the TMVP group fought together with the Sri Lankan armed forces against the LTTE in the Eastern Province. Clashes between the LTTE and the TMVP continue for example between 26 January and 20 December 2006, 82 LTTE fatalities and 30 Karuna faction fatalities were recorded following incidents of violence between the two sides. Between 9 January and 25 December 2007, there were no LTTE fatalities recorded, but there were 10 recorded fatalities of members or supporters of Karuna's faction.[24]

3.6.5 In May 2007, the Karuna Faction/ TVMP group was reported to have become further factionalised when the deputy leader of the Karuna group, Pillayan became involved in a dispute with Karuna. Pillayan subsequently became Chief Minister for the East after the TMVP won the election there.[25] However, Pillayan was reported to have met with Karuna in July 2008 to iron out old differences when both parties agreed that Karuna would maintain his position as leader of the TMVP with Pillayan continuing as deputy leader.[26]

3.6.6 The Eelam People's Democratic Party (EPDP) is a Tamil political group formed in 1986, which has fought alongside the Sri Lankan army against the LTTE since 1990. It supports the UFPA and won one seat at the April 2004 elections for the National Assembly. In March 2006, the UN Special Rapporteur reported claims by EPDP representatives that its cadre function had been disarmed and that it now functioned solely as a political party but that compliance had not been perfect. The EPDP has recorded that 75 of its members have been killed by the LTTE since the ceasefire agreement April 2003. These records include 14 deaths in 2003, 12 in 2004, 18 in 2005, 19 in 2006, 11 in 2007 and 3 in 2008 up to and including 19 June 2008..[27]

3.6.7 ***Sufficiency of protection.*** The 65,000 member police force, including the 5,850 member paramilitary Special Task Force is under the control of the Ministry of Defence. Senior officials in the police force handle complaints against the police, as does the civilian-staffed National Police Commission (NPC). In 2007, few police officers serving Tamil majority areas were Tamil and generally did not speak Tamil. The Special Task Force is the paramilitary arm of the Sri Lankan police deployed essentially for counter terrorist and counter insurgency operations within the country. The 'Tamil Eelam Police' with headquarters in Kilinochchi was formed in 1993 and reportedly has several wings including traffic, crime prevention, crime detection, information bureau, administration and a special force. LTTE cadres collect taxes, its courts administer their version of justice and the entire law and order machinery is LTTE-controlled.[28]

3.6.8 The Sri Lankan National Police Commission (NPC), with an entirely civilian staff, was set up in November 2002 and authorised to appoint, promote, transfer, discipline, and dismiss all police officers, except for the inspector general of police. The NPC was also authorised

[23] COIS Sri Lanka Country Report June 2008 Section 7 & HRW report ''Return to War: Human Rights Under Siege'

[24] COIS Sri Lanka Country Report June 2008 Incidents of violence between the LTTE and Tamil National Front

[25] COIS Sri Lanka Country Report June 2008 – Annex C

[26] The Sunday Times – Karuna and Pillayan in 5 hour talks - http://www.sundaytimes.lk/080713/News/timesnews006.html)

[27] COIS Sri Lanka Country Report June 2008 Annex C & EPDP News

[28] COIS Sri Lanka Country Report June 2008 (Human Rights: Security Forces)

to establish procedures to investigate public complaints against the police. A new chairman and three new members were appointed to the Commission in April 2006.[29]

3.6.9 The Human Rights Commission of Sri Lanka (SLHRC), was established in 1997 to carry out investigations into cases of torture, 'disappearances', political killings and other human rights violations. By statute, the HRC has wide powers and resources but has not always been that effective. In 2004, it established a torture prevention monitoring unit to implement the governments zero tolerance policy towards torture. The unit was unable to function in the last two years because of a lack of funding. However in October 2007, it recommenced visits to police stations following a recommendation to do so from the UN Special Rapporteur. The SLHRC did not however provide statistics on the number of reported torture cases during 2007.[30]

3.6.10 Following the introduction of the Emergency Regulations in August 2005 round ups and arrests of Tamils in 'cordon and search operations' have taken place. These appear to be to do with operations undertaken in the general security round. Most of those detained, generally young Tamil males, are taken into custody because they are unable to produce ID or explain the reason for them being in a particular area. According to the British High Commission in Colombo, the operations do appear to target those in casual employment or with temporary accommodation, but whilst a proportion of those detained do end up in longer term detention, most are released quickly.[31]

3.6.11 Human Rights Watch has reported that the resumption of the conflict between the LTTE and the government of Sri Lanka has brought about the return of the widespread abduction and disappearance of young men by the parties to the conflict. More than 1,500 people were reported missing between December 2005 and December 2007. Some were known to have been killed and others surfaced in detention or were otherwise found but the majority remained unaccounted for. Disappearances occurred mainly in the conflict areas of the North and East (Jaffna, Mannar, Batticaloa, Ampara and Vavuniya) though a large number of cases were also reported in Colombo. The vast majority of victims of enforced disappearances were young male ethnic Tamils on account of their alleged membership or affiliation to the LTTE, although Muslims and Sinhalese were also targeted. In the great majority of cases of reported disappearances/ abductions, the evidence showed the involvement of the government security forces (army, navy and police) who were facilitated by the emergency regulations which grant sweeping powers of arrest and broad immunity from prosecution though others were attributed to the LTTE.[32]

3.6.12 The Government announced on 27 June 2007 that it had established a centre to gather information about abductions/ enforced disappearances that occurred in Colombo and its suburbs and that two special operation cells had been set up to collect information and take immediate action on complaints of abductions and extortion in Colombo and its suburbs. The two units would function 24 hours a day and operate from the Presidential Secretariat and the Police.[33] Human Rights Watch, however, has also reported that instead of diligently investigating and prosecuting enforced disappearances the government continues to downplay the problem. Delays in investigations have also been reported by the British High Commission in Colombo. Indeed President Rajapaksa reported at the end of 2007 that of the 350 abductees reported to the government in March 2007, 21 persons were traced alive and the remains of 4 others were identified but that the 325 other cases remained unresolved.[34]

[29] NPC website – http://www.npc.gov.lk/aboutus.html
[30] USSD 2007
[31] COIS Sri Lanka Country Report June 2008 (Human Rights: Security Forces) & letter from the British High Commission, Colombo to the Home Office dated 11 September 2007
[32] COIS Sri Lanka Country Report June 2008 (Disappearances/ Abductions)
[33] COIS Sri Lanka Country Report June 2008 (Human Rights: Disappearances)
[34] COIS Sri Lanka Country Report June 2008 (Human Rights: Disappearances)

3.6.13 ***Internal relocation.*** The Sri Lankan Constitution grants every citizen 'freedom of movement', however, during 2007, the government severely restricted this right at times. For example, the government imposed more stringent checks on travellers from the north and the east and on movement in Colombo. Tamils were subject to onerous restrictions on fishing in Jaffna and Trincomalee and individuals living in Jaffna were required to obtain special passes issued by security forces to move around the country. Citizens of Jaffna were required to obtain permission from the army's Civil Affairs unit, or in some cases from the EPDP, in order to leave Jaffna (the waiting list for which was reportedly over five months long). Curfews imposed by the army also restricted the movement of Jaffna's citizens.[35]

3.6.14 In August 2006, the A9 was closed at Muhamalai and Omanthai. The Omanthai checkpoint has since reopened but is subject to severe restrictions and frequent closures (Omanthai is the main source of access to Kilinochchi and Mullativu districts and the Northern areas of Vavuniya). Similarly roads entering Vaharai were shut in late 2006 and most recently the entry point to Mannar West and Madhu. The Uliankulam point of entry has been regularly closed with the intensification of fighting in 2007. The Jaffna Peninsula is currently cut off by land and can only be accessed by air or sea.[36]

3.6.15 According to the British High Commission the LTTE pass system to travel from LTTE controlled areas to government controlled areas still exists but not in the East since the government regained control of the East. The LTTE pass system requires people to fill in a form to say: where they are going to stay; where they are coming from; and the reason for their stay. There is also a separate LTTE vehicle pass system.[37]

3.6.16 On 7 June 2007, police swept through areas of Colombo, rounded up 376 residents without 'proper' identification or 'valid reasons' for their stay and sent them on buses north to Vavuniya and east to Trincomalee. This provoked local protest and international condemnation with human rights organisations and opposition members of parliament accusing the Government of engaging in ethnic cleansing. However, the Supreme Court quickly halted the expulsions the following day and ordered the Government to return the lodge dwellers to Colombo. The Prime Minister subsequently made a public expression of regret.[38] According to the British High Commission out of the 376 persons evicted only 186 had since returned to Colombo.[39]

3.6.17 In its' position paper dated 22 December 2006 on the International Protection Needs of asylum-seekers from Sri Lanka, UNHCR stated that following the reintroduction of the post ceasefire security arrangements many checkpoints have been re-instated on the main roads and in the towns in the North and East or in Colombo, making it particularly difficult for Tamils to travel in or to government-controlled areas. In addition, UNHCR stated that it is difficult for individuals born in LTTE-controlled areas (this is indicated on the National Identity Card), to cross the checkpoints and that the LTTE has also restricted movements of civilians out of the areas under its control, thus preventing them from moving into government-controlled areas. Furthermore, the position paper stated that there is no internal flight option open to Tamil groups and that even if an individual reached a government-controlled area, she/he would not necessarily be able to secure the protection of the authorities, particularly if they were being targeted by the LTTE, given the LTTE's capacity to track down and target its opponents throughout the country.[40]

3.6.18 ***Caselaw.***

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[35] USSD 2007
[36] COIS Sri Lanka Country Report June 2008 (Human Rights: Freedom of Movement)
[37] COIS Sri Lanka Country Report June 2008 (Human Rights: Freedom of Movement)
[38] COIS Sri Lanka Country Report June 2008 (Human Rights: Freedom of Movement)
[39] COIS Sri Lanka Country Report June 2008 para 28.40
[40] UNHCR position on the international protection needs of asylum seekers from Sri Lanka dated 22 December 2006

[2002] UKIAT 04427. The IAT held that whilst the claimant had a real risk of persecution at the hands of the LTTE in his home area against which the Sri Lankan authorities could not protect him, it was not unduly harsh for him to relocate to Colombo.

[2003] UKIAT 00150 SN (Sri Lanka) CG (Scarring - Bribes - LTTE - Reprisals). The Appellant feared the LTTE and the Sri Lankan authorities. He claimed that he was forced to give information to the Sri Lankan authorities and as a result of this the LTTE came looking for him. The Tribunal found that it was unlikely that the LTTE would look for him on his return as if that were the case 'it would impact on the circumstances of probably thousands of young Tamil men who had been forced by the authorities to identify LTTE members in the past in similar circumstances.' The Appellant would be returned to Colombo where there was a sufficiency of protection.

Oppilamani [2004] EWCH 348 (Admin). The claimant feared reprisals from the LTTE because she joined and worked for the EPDP for a year and a half and because of her husband's defection from the LTTE. The claimant assisted in promoting the EPDP by organising meetings, recruiting members and making pro-EPDP speeches. She was not considered to be a high-profile political opponent. Also it was concluded that, on the facts of the case, there was a sufficiency of protection.

Mylvaganam [2005] EWHC 98 (Admin). The claimant was found not to be a true high profile opposition activist to the LTTE. The claimant was a member of the SLFP and chief organiser in the Batticaloa district, a member of a human rights task force in 1998 and appointed as a member of Batticaloa General Hospital Committee in 1999. He contested elections in Batticaloa in 2000 on behalf of the SLFP. This case is fact specific but it demonstrates what the courts take into account when considering whether an individual has a high political profile.

PS [2004] CG 00297 The Tribunal:

- restated that Tamils from the north and east of Sri Lanka, under the direct control of the LTTE, and from those areas where the degree of control has fluctuated, can in general terms safely relocate to Colombo to avoid localised fear of the LTTE. Travel restrictions have been greatly and progressively eased since the ceasefire, with a reduction in the numbers of checkpoints.

- accepted that it is physically possible for LTTE members to travel to Colombo although, in times when they have provoked public concern by their actions there, they would face heightened security measures, albeit not on the scale of the former cordon and search operations regularly carried out prior to the ceasefire. Nevertheless, it is clear that they do not choose to do so on an indiscriminate basis in order to find all those against whom they may harbour some suspicion.

- concluded that 'As we have already observed, those who the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition activists, or those whom they would see are renegades or traitors to the LTTE' (p71) and for those who are not high profile 'there is no arguable basis for saying that the Sri Lankan state does not provide a sufficiency of protection to the generality of Tamils having a localised fear of the LTTE in their home area.' (p72).

Sinnarasa [2005] EWHC 1126 (Admin). Although the High Court found that it was not necessarily just high profile individuals who may be targeted in Colombo, the detailed findings of the judgment nonetheless established a challenging threshold for Karuna type cases. The high profile of the claimant's associates and the court's finding that she came 'very close indeed to the borderline' of what could be rightly regarded as a clearly unfounded claim means that few claimants will establish that their association to the Karuna faction gives rise to a fear that is not clearly unfounded. The features of the claimant's account that took her just over the borderline were as follows:

(i) she was an intelligence operative;
(ii) she had associated herself with Colonel Karuna for a significant period of time, and that association could lead the majority LTTE to identify her as a close associate of Colonel Karuna and not simply someone caught up in the schism;
(iii) she fled with a Brigade Commander or similarly high ranking official, who was undoubtedly high profile within the LTTE;

(iv) there was evidence that she was being sought by the LTTE;
(v) there was evidence that there was an increasingly insistent demand that she report to the LTTE for an interview
(vi) there was an expert report

CG [2005] UKIAT 00076 NM and others (Somalia) made the following general points on the position of UNHCR position papers.

Not central to the case, but the Tribunal made some observations about the value of the UNHCR material. Whilst UNHCR is in a position to provide first hand information, having observers on the ground where the UNHCR issues reports discouraging states from going ahead with returns of rejected asylum seekers, for example, where the local resources are overstretched, this does not of itself show that return would breach either Convention. UNHCR in such cases, is pursuing its wider humanitarian and practical considerations for return of people. UNHCR's language is not framed by reference to the ECHR and to the high threshold of Article 3….their assessments show that the UNHCR quite often adopts a standard which is not that of the UK's ECHR obligations (paras 108-115)

Nadanasikamani [2006] EWCA Civ 173. The court found that nothing in Sinnarasa unseated the reasoning in PS.

Yogachandran [2006] EWHC 392 (Admin). The court found that nothing in any of the subsequent materials brought to the attention of the court throws the slightest doubt on the continuing validity of the factual analysis so carefully undertaken in PS.

Martin [2006] EWHC 799 (Admin). The court found that whilst the situation in Colombo had deteriorated since the Tribunal decided PS even taking into account Dr Smith's report at its highest in favour of this claimant it does not in this type of case or in this particular case invalidate the essential thrust of the reasoning on the Tribunal in PS. On the Dr Smith report the court noted that even in a certification case and even in the case of an expert of the obvious expertise and integrity of Dr Smith the Sec of State is not compelled to accept every pronouncement by an expert. The more general, unsourced and unparticularised the report, the easier it may be for the Sec of State to say that a case is clearly unfounded; the more detailed, sourced and particularised the report, the more significant the report will be.

Suganthini [2006] EWHC 2524 (Admin). The claimant's fear centred on her being of continuing adverse interest to the LTTE as result of her partner, an EDPD member who was assassinated in the East. She had ceased her low-level activities for the EDPD in mid-2004. The court was not satisfied that her profile was raised as a result of the relationship and looked at evidence of recent cease-fire breaches to decide whether they arguably created a real risk of persecution or Article 3 ill-treatment for the generality of Tamils in Colombo:

- 'there is no picture of sustained attacks upon low level Tamils who may be opposed to the LTTE for political reasons or personal reasons who are living in Colombo.' (Paragraph 12)

- 'Mr Martin makes the submission: that may well be because they are insignificant enough not to be reported and their fate is not known to their loved ones or anyone else who is able to report them. He points out a recent report in the BBC of yesterday's date [27 September 2006] suggesting that some Tamils were concerned about abductions. The difficulty of basing a submission upon a piece of raw news material of that sort is that it has not really been analysed, digested and tested, but certainly that report does mention the abduction of journalists. There is insufficient information in that report to suggest that, of itself, that is evidence that is likely to change the mind of an immigration judge in respect of the general assessment of safety of Tamils in Colombo when looking at the individual case of the claimant.' (Paragraph 13)

- 'There is an absence of a volume of material suggesting that the activities of the LTTE were significantly different in recent months in 2006 due to the impending breakdown of their cease-fire with the government. By "the activities", I mean activities directed at Tamils who are not members of the Sri Lankan Government or prominent members of any of the political parties linked with the Sri Lankan Government or otherwise identified as an opponent of the LTTE.' (Paragraph 14)

3.6.19 ***Conclusion.*** We do not accept UNHCR's position that there is no internal flight alternative for individuals fleeing targeted violence and human rights abuses by the LTTE due to difficulties in travel because of the reinstatement of checkpoints and because of the inability of the authorities to provide 'assured protection' given the reach of the LTTE. UNHCR's reliance on the concept of 'assured protection' is not a fundamental requirement of the Refugee Convention. In referring to 'assured protection', UNHCR are using a higher standard than the sufficiency of protection standard required by the Refugee Convention. Moreover, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that case owners give individual consideration to whether the applicant has a well-founded fear of persecution for a convention reason or are otherwise vulnerable that they may engage our obligations under the ECHR. Individuals who fear persecution at the hands of the LTTE in LTTE controlled areas in the North may be able to relocate to Colombo, or other Government controlled areas and caseowners should consider whether it would not be unduly harsh for claimants to relocate in this way. Similarly, the Government is willing to offer to protection to those who have relocated from LTTE controlled areas and who still fear reprisals from the LTTE.

3.6.20 While violent attacks by the LTTE on its opponents and former members continue to take place which the Sri Lankan authorities have been unable to counter entirely and despite delays in investigating "disappearances", the Sri Lankan authorities do seek to investigate and prosecute those who commit violent acts within Sri Lanka. On the basis of the information available, it can be considered that the authorities are willing and capable of providing sufficient protection for Tamils in areas they control, who do not support the LTTE and/or whose level of opposition has not brought them to the specific attention of the LTTE. However, it is clear that in areas the Government does not control, the authorities are not able to adequately protect low or non-LTTE affiliated Tamils. Meanwhile, for high profile Tamils anywhere in the country, the LTTE are able to seek out and take action against some particular individuals.

3.6.21 In addition to carefully establishing the applicant's previous involvement with, and/or level of opposition to the mainstream LTTE, case owners must take care to distinguish between applicants expressing fear of LTTE persecution on the grounds that (a) the applicant is regarded by the LTTE as a '*defector*', 'traitor' or '*renegade*'; (b) those who are political opponents of the LTTE including EPDP membership or affiliation; and (c) those closely associated with the internal LTTE schism as TMVP supporters/ Colonel Karuna/ Pillayan supporters. Case owners should note that members of the LTTE, EPDP and the TMVP have been responsible for serious human rights abuses. If it is accepted that an applicant was an active operational member or combatant for the LTTE, EPDP or TMVP and the evidence suggests he/she has been involved in such actions, case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.

3.6.22 Low level supporters or members of a Tamil, including the EPDP and TMVP (including Karuna/ Pillayan factions), or non-Tamil, political party opposed to the LTTE who have never had a previous association with the LTTE are unlikely to be the target of reprisals by the LTTE. Those whom the LTTE has on the objective evidence targeted in Colombo in recent years have all been high profile activists opposed to the LTTE. In the event that an applicant did consider themselves at risk, the Sri Lankan Government are both willing and able to provide a sufficiency of protection. Most applications under this category therefore are likely to be clearly unfounded and as such fall to be certified. However applicants who additionally have past links to the LTTE may attract additional attention from the LTTE and are unlikely to be clearly unfounded.

3.6.23 Prominent past supporters or members of Tamil political parties including the EPDP and TMVP (including Karuna/ Pillayan factions) who have aligned themselves with the government against the LTTE and who have consciously and publicly opposed the LTTE are likely to attract the adverse interest from the LTTE in Colombo. In such circumstances, the Sri Lankan Government are generally able to provide sufficient protection. Whilst claims

in this category are likely to be refused, it is unlikely that the claims will fall to be certified as clearly unfounded. However, where an individual applicant is able to demonstrate that they are of such high political profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.

3.6.24 Former low level members or supporters of the LTTE who have now aligned themselves with the Government against the LTTE, (or who are perceived by the LTTE to be opponents, whether or not they actually are) are unlikely to be the target of reprisals by the LTTE. There is no evidence that the LTTE pursue people who refuse to carry out low level ancillary activities (such as cooks, book keepers etc) for the mainstream LTTE. Those whom the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition activists. In the event that the applicant did consider themselves at risk, the Sri Lankan Government are both willing and able to provide a sufficiency of protection. Applications under this category therefore are likely to be clearly unfounded and as such fall to be certified.

3.6.25 In cases involving LTTE 'defectors', 'traitors' or 'renegades' , case owners need to carefully establish which of these terms applies to the claimant. 'Defectors' who have assisted the Sri Lankan authorities at a strategic level (for example those who have aligned themselves with the Sri Lankan army military intelligence units) are at risk of being targeted by the LTTE in Colombo. In such circumstances, the Sri Lankan Government are generally able to provide sufficient protection. Whilst claims in this category are likely to be refused, it is unlikely that the claims will fall to be certified as clearly unfounded. However, where an individual applicant is able to demonstrate that they are of such high political profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum. If the applicant has never been an LTTE member and their actions do not involve leaving the LTTE and subsequently joining another organisation, or the applicant cannot demonstrate significant previous commitment to the LTTE or subsequent formal membership or ongoing and regular assistance to LTTE opposition groups or the Sri Lankan security forces, then the applicant's activities are unlikely to result in them being targeted by the LTTE in Colombo and such applications under this category therefore are likely to be clearly unfounded and as such fall to be certified. The terms 'traitor' or 'renegade' are used in relation to those persons who fear being attacked by the LTTE in Colombo because they have engaged in, or the LTTE think they have been engaged in, activity which is seen as disloyal to the LTTE. Those whom the LTTE have targeted in Colombo since the ceasefire have all been high profile activists. It is not the case that all those who have committed or are thought to have committed any 'treacherous' act or acts damaging to the LTTE are at risk of being targeted. Claims made by former members of the LTTE who have merely provided information under duress or those refusing to carry out low level ancillary activities for the mainstream LTTE are therefore likely to be clearly unfounded and as such fall to be certified as such. However, where an individual applicant is able to demonstrate that they are an activist of such high profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.

3.6.26 Those who fear persecution by the LTTE because of their association to the TVMP/ Karuna/ Pillayan faction are unlikely to establish a need for international protection unless the applicant's association could lead the mainstream LTTE to identify them as a close associate of Colonel Karuna/ Pillayan. If an applicant did not have regular contact with the faction leaders and their role was one that did not go beyond basic logistical support, they are unlikely to be at risk. Few applicants therefore are likely to establish that their association to the TVMP gives rise to a fear that is not clearly unfounded. However, where an individual applicant is able to demonstrate that they were closely associated with Karuna/ Pillayan that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.

3.7 Fear of persecution by the Sri Lankan authorities

3.7.1 Many applicants will claim asylum based on ill-treatment amounting to persecution at the hands of the Sri Lankan authorities due to their past involvement with the LTTE or other political organisations opposed to the Government.

3.7.2 ***Treatment.*** The ceasefire agreement signed in February 2002 by the Sri Lankan Government and the LTTE, with the overall objective of finding a negotiated solution to the ethnic conflict was formally annulled by the government in January 2008. The government insisted that there was little to be gained in adhering to an agreement that had been violated persistently by the LTTE.[41] Armed clashes between the the LTTE and the government continued and further intensified during 2008. In February, March and April 2008 incidents were particularly reported in the north in the districts of Jaffna, Mannar, Vavuniya and Mullahitivu.[42]

3.7.3 In August 2005, following the assassination of the foreign minister, parliament approved emergency regulations giving power of arrest to members of the armed forces, who are required to turn suspects over to the police within 24 hours. Individuals arrested under the emergency regulations may be detained for up one year without trial.[43] Following the introduction of the Emergency Regulations, round ups and arrests of Tamils in 'cordon and search operations' have taken place in and around Colombo. These appear to be to do with operations undertaken in the general security round. Most of those detained, generally young Tamil males, are taken into custody because they are unable to produce ID or explain the reason for them being in a particular area. According to the British High Commission in Colombo, the operations do appear to target those in casual employment or with temporary accommodation, but whilst a proportion of those detained do end up in longer term detention, most are released quickly.[44]

3.7.4 The government refused to release statistics on the number of arrests made during 2007 under the emergency regulations. Several thousand individuals were detained at least temporarily under the emergency regulations during 2007, the majority of whom were released within 24 hours of their arrest. According to Human Rights Watch, detainees under the Emergency Regulations were kept in regular prisons as well as police stations and other detention facilities, including those run by the Terrorism Investigation Division. The government failed to provide complete lists of those detained, the charges they faced, or the locations where they were held as, under the Emergency Regulations, there was no requirement to publish the places where people were held.[45]

3.7.5 Human Rights Watch has reported that the resumption of the conflict between the LTTE and the government of Sri Lanka has bought about the return of the widespread abduction and disappearance of young men by the parties to the conflict. More than 1,500 people were reported missing between December 2005 and December 2007. Some were known to have been killed and others surfaced in detention or were otherwise found but the majority remained unaccounted for. Disappearances occurred mainly in the conflict areas of the North and East (Jaffna, Mannar, Batticaloa, Ampara and Vavuniya) though a large number of cases were also reported in Colombo. The vast majority of victims of enforced disappearances were young male ethnic Tamils on account of their alleged membership or affiliation to the LTTE, although Muslims and Sinhalese were also targeted. In addition, in the great majority of cases of reported disappearances/ abductions, the evidence showed the involvement of the government security forces (army, navy and police) who were facilitated by the emergency regulations which grant sweeping powers of arrest and broad immunity from prosecution.[46]

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[41] COIS Sri Lanka Country Report June 2008 para 3.35
[42] COIS Sri Lanka Country Report June 2008 – Recent Developments
[43] USSD report – March 2008 - http://www.state.gov/g/drl/rls/hrrpt/2006/78875.htm
[44] COIS Sri Lanka Country Report June 2008 Section 8
[45] COIS Sri Lanka Country Report June 2008 (Security Forces; Arbitary Arrest and Detention)
[46] COIS Sri Lanka Country Report June 2008 (Disappearances/ Abductions)

3.7.6 According to the USSD, there were credible reports of politically motivated and arbitrary and unlawful killings by government agents during 2007. Extrajudicial killings occurred in Jaffna nearly on a daily basis and were allegedly perpetrated by military intelligence units or associated paramilitaries.[47]

3.7.7 ***Sufficiency of protection.*** Where this category of claimants fear is of ill-treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.7.8 Some individuals may fear the actions of state officials or the police. Information on the avenues of complaint against the actions of the police available within Sri Lanka is included in paragraphs 3.6.7 - 3.6.9 above.

Torture

3.7.9 Impunity, particularly for cases of police torture, remains a serious problem in Sri Lanka. Following his visit to Sri Lanka from 1 to 8 October 2007, the UN Special Rapporteur reported that torture was widely practised and that there were consistent and credible allegations of ill-treatment by the police during inquiries in order to extract confessions or obtain information in relation to other criminal offences.[48] The UN Special Rapporteur also attributed the lack of convictions for torture to the absence of effective investigation, inadequate protection for victims and witnesses of torture and an excessive minimum sentence for torture. He noted that the police used threats of violence and fabrication of criminal cases to prevent the victims of torture by police officers from filing complaints. Furthermore, he advised that detainees reported that magistrates did not provide them with an opportunity to complain about police torture while the perpetrators often accompanied the victims to courts and remained present during medical examinations.[49]

3.7.10 The Government has undertaken steps to reduce torture in police custody and there are avenues of complaint available via the HRC or the NPC. However, human rights organisations and NGOs have criticised Sri Lanka's law enforcement agencies and judicial system for failing to eliminate human rights violations reportedly carried out by the police and armed forces.

Enforced disappearances/ abductions

3.7.11 Whilst not able to report on the number of disappearances in 2007, the Sri Lanka Human Rights Commission reported 345 instances countrywide of politically motivated disappearances in 2006 by state security forces, pro-government paramilitary groups and the LTTE. [50]

3.7.12 The Government announced on 27 June 2007 that it had established a centre to gather information about abductions/ enforced disappearances that occurred in Colombo and its suburbs and that two special operation cells had been set up to collect information and take immediate action on complaints of abductions and extortion in Colombo and its suburbs. The two units would function 24 hours a day and operate from the Presidential Secretariat and the Police.[51] Human Rights Watch, however, has reported that instead of diligently investigating and prosecuting enforced disappearances the government continues to downplay the problem. Delays in investigations have also been reported by the British High Commission in Colombo. Indeed President Rajapaksa reported at the end of 2007 that of the 350 abductees reported to the government in March 2007, 21 persons were traced alive and the remains of 4 others were identified but that the 325 other cases remained unresolved.[52]

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[47] Human Rights Watch – Recurring Nightmare – March 2008
[48] COIS Sri Lanka Country Report June 2008 (Torture)
[49] USSD 2007
[50] USSD 2007 Section 1
[51] COIS Sri Lanka Country Report June 2008 (Human Rights: Disappearances)
[52] COIS Sri Lanka Country Report June 2008 (Human Rights: Disappearances)

3.7.13 Despite the Government's 'zero tolerance' policy on torture,[53] there remain concerns that the measures being taken by the Government cannot be said to be ensuring that there are adequate means of redress or protection against torture in police custody. And, whilst some cases of enforced disappearance/ abduction are investigated, there is generally no effective investigation on the part of the authorities of cases of enforced disappearance or abduction. As a result, there cannot be said to be a sufficiency of protection for those who can show that they face a serious risk from police actions in Sri Lanka.

3.7.14 ***Internal relocation.*** Applicants with a well founded fear of persecution by the authorities would not be able to internally relocate to another part of the country controlled by the Sri Lankan Government to escape any such risk.

3.7.15 The LTTE has effective control on the ground in some parts of the North (parts of Jaffna peninsula and the Vanni) and operates a parallel administration that includes schools, hospitals, courts and police and other law enforcement personnel. For example, the Tamil Eelam Police has headquarters in Kilinochchi with several wings including traffic, crime prevention and crime detection and its courts administer their version of justice. However, travel to the Northern LTTE controlled parts is restricted since the resumption of large scale combat operations.[54] In August 2006, the A9 was closed at Muhamalai and Omanthai. The Omanthai checkpoint has since reopened but is subject to severe restrictions and frequent closures (Omanthai is the main source of access to Kilinochchi and Mullativu districts and the Northern areas of Vavuniya). Similarly roads entering Vaharai were shut in late 2006 and most recently the entry point to Mannar West and Madhu. The Uliankulam point of entry has been regularly closed with the intensification of fighting in 2007. The Jaffna Peninsula is currently cut off by land and can only be accessed by air or sea.[55]

3.7.16 In its position paper dated 22 December 2006, UNHCR stated that individuals fleeing targeted violence or human rights abuses by the authorities or paramilitary groups would not be able to relocate to LTTE controlled areas given the reach of the authorities or paramilitary groups; that these areas are extremely difficult to access; and, that within these areas there is a situation of generalised violence, forced recruitment, armed conflict and widespread serious violations of human rights.[56]

3.7.17 We do not accept UNHCR's position. Asylum and human rights claims are not decided on the basis of a general approach but rather the circumstances of the particular individual and the specific risk to that individual. It is important that case owners give individual consideration to whether the applicant has a well-founded fear of persecution for a convention reason or are otherwise vulnerable that they may engage our obligations under the ECHR. While travel to Northern LTTE controlled parts is restricted, the LTTE does have effective control on the ground in some Northern areas and operates a parallel administration that includes schools, hospitals, courts, and police and other law enforcement personnel.[57] It may therefore, in some circumstances, be possible for applicants who fear persecution at the hands of the Sri Lankan Government (in areas controlled by the Government) to relocate to LTTE controlled areas. Consideration should be given on the individual merits of the case to see whether it would be unduly harsh for applicants to relocate in this way. Similarly where the risk relates to the actions of police officers, individuals may be able to relocate to escape the attention of the police officer concerned either to another area under Government control or to areas under LTTE control.

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[53] Ministry of Disaster Management and Human Rights: Human Rights Ministry Response to Special Rapporteur on Torture's Statement (dated 31 October 2007)
[54] COIS Sri Lanka Country Report June 2008 (Section 28-Entry/Exit points between Government controlled and LTTE controlled areas)
[55] COIS Sri Lanka Country Report June 2008 (Human Rights: Freedom of Movement)
[56] UNHCR position on the international protection needs of asylum seekers from Sri Lanka dated 22 December 2006
[57] Freedom House; Freedom in the World 2007: Sri Lanka

3.7.18 *Caselaw.*

CG [2005] UKIAT 00076 NM and others (Somalia) made some general points on the position of UNHCR position papers.

Not central to the case, but the Tribunal made some observations about the value of the UNHCR material. Whilst UNHCR is in a position to provide first hand information, having observers on the ground where the UNHCR issues reports discouraging states from going ahead with returns of rejected asylum seekers, for example, where the local resources are overstretched, this does not of itself show that return would breach either Convention. UNHCR in such cases, is pursuing its wider humanitarian and practical considerations for return of people. UNHCR's language is not framed by reference to the ECHR and to the high threshold of Article 3,,,, their assessments show that the UNHCR quite often adopts a standard which is not that of the UK's ECHR obligations (paras 108-115)

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

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

- there was a greater risk of detention and interrogation at Colombo airport than in Colombo city since the authorities at the airport would have greater control over the passage of persons there than the population at large;
- the majority of risk factors in LP would be more likely to bring a returnee to the attention of the Sri Lankan authorities at the airport than Colombo city
- the assessment of whether somebody is at real risk on return may depend on the likelihood of their being detained and interrogated at Colombo airport;

- the Sri Lankan authorities have the technological means and procedures in place to identify failed asylum seekers at the airport and those who are wanted by the authorities, however, the rigour of checks will vary from time to time depending on the security concerns of the authorities; and,
- in respect of risk of ill treatment of Tamils from the LTTE in a government controlled area such as Colombo, consistent with the determination in AIT determination of PS, only Tamils with a high profile as opposition activists or those seen by the LTTE as renegades or traitors may be able to demonstrate a real of mistreatment.

3.7.19 ***Conclusion.*** The emergency regulations imposed in August 2005 which continue to be in place allow for the arrest of individuals by members of the armed forces and those detained may be held for up to one year without trial. Young Tamil men who are suspected of being LTTE members or supporters appear to be the primary target of arrests. However, most are reportedly released quickly and it can therefore still be said that generally the authorities in Sri Lanka are not concerned with those individuals with past low-level support for the LTTE. Claims under this category are therefore likely to be clearly unfounded and fall to be certified as such.

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

3.7.21 There cannot be said to be a general sufficiency of protection available to those applicants who express fear of state officials after having made complaints to the Sri Lankan authorities with regard to, for example, the use of torture. However, internal relocation to LTTE areas in the North may be an option where, in the particular circumstances of the applicant's case, it is not considered unduly harsh for the victim to exercise this. The grant of asylum or Humanitarian Protection is unlikely therefore to be appropriate where there is an option of internal relocation. Such claims should only be certified as clearly unfounded if internal relocation is clearly an option.

3.8. General country situation

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

3.8.2 ***Treatment.*** Fighting intensified in Sri Lanka during 2007. While the Sri Lankan military made significant gains and demonstrated its force superiority, vulnerabilities were also exposed and exploited by the LTTE. The government made significant gains against the LTTE on the ground in the eastern regions taking control of Batticaloa and Thoppigala on 11 July 2007, signifying the end of LTTE influence in the eastern area.[58]

3.8.3 In January 2008, the Ceasefire Agreement (CFA) was formally annulled by the Government. The government insisted that there was little to be gained in adhering to an agreement that had been violated persistently by the LTTE.[59] Armed clashes between the

[58] COIS Sri Lanka Country Report June 2008 para 3.35
[59] COIS Sri Lanka Country Report June 2008 para 3.35

LTTE and the government continued and further intensified during 2008. In February, March and April 2008, incidents were particularly reported in the north in the districts of Jaffna, Mannar, Vavuniya and Mullahitivu.[60]

3.8.4 According to the South Asia Terrorism Portal, the number of killings in Sri Lanka in the two years preceding the ceasefire of February 2002 was 5,973 in 2000 and 1,822 in 2001. Fifteen people were reported killed in 2002; 59 in 2003; 108 in 2004, 330 in 2005, 4,126 in 2006 and 4377 in 2007. The South Asia Terrorism Portal has reported that there were 6199 killings from January 2008 until 21 July 2008[61]

3.8.5 In recent years the Government has undertaken steps to reduce police abuses and there are avenues of complaint available via the HRC or the NPC. Still, Human rights organisations and NGOs such as the International Crisis Group (ICG) and Human Rights Watch have criticised Sri Lanka's law enforcement agencies and judicial system for failing to eliminate human rights violations reportedly carried out by the police and armed forces.

3.8.6 According to the USSD, there were credible reports of politically motivated and arbitrary and unlawful killings by government agents during 2007. Extrajudicial killings occurred in Jaffna nearly on a daily basis and were allegedly perpetrated by military intelligence units or associated paramilitaries. Government security forces used the broad 2005 emergency regulations to detain civilians arbitrarily including journalists and members of civil society and were also reported to be implicated in disappearance and abductions. [62]. Human Rights Watch has indicated that about 1000 "disappearances" were reported to the Sri Lanka Human Rights Commission in 2006 and over 300 cases in the first four months of 2007 alone; the majority of which showed involvement by state security forces - army, navy and police.[63]

3.8.7 The LTTE which maintains control of sections of the north continued during 2007 to attack civilians and engage in torture and arbitrary arrest and detention; denied fair public trials; arbitrarily intervened with privacy; denied freedoms of speech, press and association and forced recruitment of children.[64]

3.8.8 ***Sufficiency of protection.*** As this category of applicants' fear is of mistreatment on the basis of the general country situation and not particular state or non-state agents, the availability of sufficient state protection is not relevant.

3.8.9 ***Internal relocation.*** While the general security situation deteriorated in the course of 2007 as a result of heightened conflict between the Government and LTTE, the main incidents of insecurity continue to be reported in the north of the country following the Government securing control of the Eastern region in July 2007 .

3.8.10 General information on freedom of movement is at paragraphs 3.6.13-3.6.15

3.8.11 Applicants who fear mistreatment on the basis of the general country situation, specifically in the northern areas are able to relocate outside these areas to Colombo, or other areas in the south and it would not normally be found to be unduly harsh for applicants to relocate in this way.

3.8.12 ***Caselaw.***

Martin [2006] EWHC 799 (Admin). On considering the numbers and locations of Tamil fatalities in the context of a) the Tamil population as a whole and b) former members,

[60] COIS Sri Lanka Country Report June 2008 – Recent Developments
[61] COIS Sri Lanka Country Report September 2007 Human Rights: Abuses By Non-Government Armed Forces) & South Asia Terrorism Portal (SATP): 'Fatalities District Wise 2007', 'Fatalities District Wise 2006', 'Fatalities District Wise 2005' & 'Prominent Tamil political leaders assassinated since the Ceasefire Agreement'
[62] USSD 2008 Section 1
[63] Human Rights Watch – Recurring Nightmare – March 2008
[64] USSD 2007 Section 1

operatives or associates of the LTTE, the following findings were made about incidents in Colombo: 'The third thing which was significant is the comparatively limited number in absolute terms of the incidents which Dr Smith describes. Now, Ms Weston, appropriately if I may say so, cautions me against too vigorous a tallying-up of the numbers. She makes the point, which for present purposes I entirely accept, that there is, as I have mentioned, very significant under-reporting of such incidents. But as to that, I would make this observation: the point being made by the Tribunal in **PS** was not that because there were only 25 deaths amongst the Tamil population of 400,000 or 450,000 that the risk was a risk to be evaluated arithmetically by a comparison of 25 with 450,000, but that the order of magnitude was very small indeed. Putting the same point the other way round, however much one inflates Dr Smith's list having regard to under-reporting, one is, it seems to me, concerned with numbers which overall are, on any basis, almost vanishingly small when contrasted with the overall population, not of Tamils in Colombo but of former members, operatives or associates of the LTTE in Colombo, that being, of course, the relevant and true comparison.' [emphasis added] (para 21)

Suganthini [2006] EWHC 2524 (Admin). The claimant's fear centred on her being of continuing adverse interest to the LTTE as result of her partner, an EDPD member who was assassinated in the East. She had ceased her low-level activities for the EDPD in mid-2004. The court was not satisfied that her profile was raised as a result of the relationship and looked at evidence of recent cease-fire breaches to decide whether they arguably created a real risk of persecution or Article 3 ill-treatment for the generality of Tamils in Colombo:

- 'there is no picture of sustained attacks upon low level Tamils who may be opposed to the LTTE for political reasons or personal reasons who are living in Colombo.' (Paragraph 12)

- 'Mr Martin makes the submission: that may well be because they are insignificant enough not to be reported and their fate is not known to their loved ones or anyone else who is able to report them. He points out a recent report in the BBC of yesterday's date *[27 September 2006]* suggesting that some Tamils were concerned about abductions. The difficulty of basing a submission upon a piece of raw news material of that sort is that it has not really been analysed, digested and tested, but certainly that report does mention the abduction of journalists. There is insufficient information in that report to suggest that, of itself, that is evidence that is likely to change the mind of an immigration judge in respect of the general assessment of safety of Tamils in Colombo when looking at the individual case of the claimant.' (Paragraph 13)

- 'There is an absence of a volume of material suggesting that the activities of the LTTE were significantly different in recent months in 2006 due to the impending breakdown of their cease-fire with the government. By 'the activities', I mean activities directed at Tamils who are not members of the Sri Lankan Government or prominent members of any of the political parties linked with the Sri Lankan Government or otherwise identified as an opponent of the LTTE.' (Paragraph 14)

3.8.13 ***Conclusion.*** Fighting intensified in Sri Lanka during 2007 and into 2008 as a result of heightened conflict between the Government and the LTTE. The main incidents of insecurity continue to be reported in the northern districts. While violent confrontations between the two sides have escalated with fatalities and disappearances also reported in other regions, a state of civil instability and/or where law and order has sometimes broken down, as has happened in Sri Lanka, does not of itself give rise to a well-founded fear of persecution for a Convention reason. An applicant can only demonstrate a well-founded claim where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs during such instability/ insecurity. A general risk of violence based on Government-LTTE conflict will not in itself be sufficient to bring applicants within the Humanitarian Protection or Discretionary Leave provisions; as conditions within Sri Lanka are not sufficiently poor that they would amount to a breach of the ECHR for those returning to Sri Lanka. Claims under this category are unlikely to warrant a grant of asylum.

3.8.14 The grant of Humanitarian Protection on account of generalised violence will only be appropriate where the circumstances of the individual are such that their return will breach Article 3. Refer to the Asylum Instructions on Humanitarian Protection for more information.

3.9 Prison conditions

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

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

3.9.3 ***Consideration.*** It was reported that prison conditions in Sri Lanka did not meet international standards in 2007 due to acute overcrowding and a lack of sanitary facilities. In some cases, juveniles were not held separately from adults and pre-trial detainees were not held separately from those convicted. The Government permits visits by independent human rights observers, including the International Committee of the Red Cross (ICRC). In 2007, the ICRC reported receiving unrestricted access to government and LTTE controlled prison facilities. However, the government did not provide access to any detention facilities operated by military intelligence, stating that none existed. There were widespread reports of secret government safe houses where suspected LTTE sympathisers were taken, tortured and often killed.[65]

3.9.4 According to the UN Special Rapporteur, the combination of severe overcrowding and an antiquated infrastructure of certain prison facilities placed unbearable strain on services and resources which for detainees in certain prisons, for example, the Colombo remand prison amounted to degrading treatment. The UN Special Rapporteur also noted the absence of an independent institution responsible for monitoring conditions in detention facilities, holding private interviews and conducting medical evaluations of detainees.[66]

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

4 Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See the Asylum Instructions on Discretionary Leave). Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Sri Lanka the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the

[65] USSD 2007
[66] USSD 2007

claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 The policy on minors claiming in their own right is set out in the Asylum Instructions on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Sri Lanka.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, and who do not qualify for leave on any more favourable grounds, should be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Sri Lanka due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 to be engaged.

4.4.2 In Sri Lanka, the traditional Western medical structure of general practitioners, specialists and hospitals with operating theatres and emergency units, co-exists with the traditional practice of ayurvedic (herbal) medicine. The government health sector takes care of healthcare needs of the vast majority of the population, the private sector being quite small in terms of service provision and mostly available in urban areas. Almost 60% of Sri Lanka's population relies on the public health care system, with some 95% of inpatient health care being provided by the public sector. Health care in the public sector provides both Western and Ayurvedic systems of health care although the majority of the population seeks treatment from Western medicine. Three tiers of public medical institutions provide curative health care. There are also 26,522 health units headed by medical officers that deliver preventive health services.[67]

4.4.3 Most conventional medicines are available in Sri Lanka. Government hospitals provide drugs free of charge, unless prescribed outside. The prices for medications bought in Sri Lanka range widely, but as a comparison, most drugs would be cheaper than in the United Kingdom for prescription and dispensing charges. On the whole, medical care is affordable for the average person, and government hospitals generally charge a lesser fee than private hospitals.[68]

4.4.4 ***Caselaw***

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

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

[67] COIS Sri Lanka Country Report June 2008 (Human Rights: Medical Issues)
[68] COIS Sri Lanka Country Report June 2008 (Human Rights: Medical Issues)

5 Returns

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

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

5.3 Assistance is provided for those that wish to return voluntarily and permanently through the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the Border and Immigration Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Sri Lanka. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Sri Lankan nationals wishing to avail themselves of this opportunity for assisted return to Sri Lanka should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

5.4 ***Caselaw.***

CG [2005] UKIAT 00076 NM and others (Somalia) made some general points on the position of UNHCR position papers.

Not central to the case, but the Tribunal made some observations about the value of the UNHCR material. Whilst UNHCR is in a position to provide first hand information, having observers on the ground where the UNHCR issues reports discouraging states from going ahead with returns of rejected asylum seekers, for example, where the local resources are overstretched, this does not of itself show that return would breach either Convention. UNHCR in such cases is pursuing its wider humanitarian and practical considerations for return of people. UNHCR's language is not framed by reference to the ECHR and to the high threshold of Article 3….their assessments show that the UNHCR quite often adopts a standard which is not that of the UK's ECHR obligations (paragraphs 108-115).

CG [2007] UKIAT 00076 LP. With reference to the UNHCR position paper of December 2006, the Tribunal agreed that the protection agenda of the UNHCR is a wider one than the mere assessment of refugee or subsidiary protection status. With regard to Tamil applicants the Tribunal found that (1) Tamils are not per se at risk of serious harm from the Sri Lankan authorities in Colombo. A number of factors might increase the risk, including but not limited to: a previous record as a suspected or actual LTTE member; a previous criminal record and/ or outstanding arrest warrant; bail jumping and/ or escaping from custody; having signed a confession or a similar document; having been asked by the security forces to become an informer; the presence of scarring; return from London or other centre of LTTE fundraising; illegal departure from Sri Lanka; lack of an ID card or other documentation; having made an asylum claim abroad; having relatives in the LTTE. The Tribunal found that in every case, those factors and the weight to be ascribed to them, individually and cumulatively, must be considered in the light of the facts of each case but they are not intended to be a checklist. (2) If a person is actively wanted by the police and/or named on a

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

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

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

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