



COUNTRY POLICY BULLETIN

Sri Lanka

SRI LANKA POLICY BULLETIN 1/2012

1. Introduction

- 1.1 The purpose of this Bulletin is to confirm the policy of the UK Border Agency (hereafter referred to as UKBA or the Agency) on returns to Sri Lanka following allegations made of mistreatment, amounting to torture, of returnees from the UK.
- 1.2 This bulletin must be read together with the Country of Origin Information (COI) report and Operational Guidance Note (OGN) for Sri Lanka. Both the COI report and OGN are available on the Agency's web site:
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/>

2. Background

- 2.1 The UN Committee Against Torture met in Geneva at the beginning of November 2011 to review Sri Lanka's implementation of its responsibilities under the UN convention. 12 Non-Governmental Organisations (NGOs) made submissions stating that torture is widespread.¹ The Sri Lankan delegation also presented its own report and gave oral evidence.
- 2.2 The UK based Freedom from Torture (FfT), formerly the Medical Foundation for the Care of Victims of Torture, made submissions to the UN Committee and also separately published a report in November [see section 3.2], based on assessments and testimonies made by 35 asylum referrals to FfT in the UK, between May 2009 and September 2011.² The report covered a wide range of issues including the allegation that Sri Lankans returning to the country may be tortured.
- 2.3 FfT issued a statement on 25 February 2012 that the UK should cease enforced returns to Sri Lanka. This was in response to a Human Rights Watch (HRW) article listing eight anonymous allegations of mistreatment on return and calling on the UK to suspend enforced returns.

3. Allegations of mistreatment on return

3.1 Human Rights Watch (HRW):

- 3.1.1 HRW published an article on 25 February 2012³ stating that they had evidence of eight cases of mistreatment of Sri Lankan returnees, and gave information about the torture allegedly inflicted on five of these cases. They advocated a cessation of UK returns, in particular the charter scheduled for 28 February. The evidence in the HRW article was considered by the Agency. However the eight HRW allegations

¹ <http://www2.ohchr.org/english/bodies/cat/cats47.htm>

² http://www2.ohchr.org/english/bodies/cat/docs/ngos/FFT_SriLanka47.pdf

³ <http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka>

were anonymous and provided insufficient evidence, even with the FfT allegations (see section 3.2) to justify the UK halting all enforced returns to Sri Lanka.

- 3.1.2 In a determination issued on 27 February 2012 in the case of X (case number CO/19895/2012)⁴ the Immigration and Asylum Chamber, Upper Tribunal considered and dismissed the HRW evidence in a judicial review challenge to removals on the February charter flight, stating: “Having regard to the details of the FfT, Amnesty International and HRW cases of concern, we are bound to say that the quality of the claims made about them, as presently presented, leaves much to be desired. They certainly pose a number of questions as any set of allegations must inevitably do, but they raise even more unanswered questions about their own efficacy.” [See below for details of the FfT and Amnesty International allegations]. The charter flight took place on 28 February and removed 52 Sri Lankan nationals.
- 3.1.3 Two days before a further charter flight to Sri Lanka was due, HRW published a further article on 29 May 2012 again calling for a halt to returns to Sri Lanka.⁵ This stated that “in addition to the eight cases in which deportees faced torture on return reported in February, Human Rights Watch had since documented a further five cases in which Tamil failed asylum seekers were subjected to torture by government security forces on return from various countries.” As with the previous allegations, there was insufficient evidence to warrant any change in the policy of returns to Sri Lanka.
- 3.1.4 HRW approached the British High Commission in Colombo in June 2012 saying they wanted to share confidential case files detailing alleged torture of returnees as cited in their May 2012 article. The Foreign & Commonwealth Office (FCO) contacted UKBA officials and agreed that a meeting, with UKBA present, should go ahead with HRW in the UK.
- 3.1.5 Human Rights Watch on 1 August 2012 provided a summary of the 13 anonymous Sri Lankan cases (eight from February and five from May 2012 articles– see above) alleging mistreatment/ torture on or after return from the UK and other countries. According to HRW all 13 cases were now in the UK, that they had all claimed asylum and six had been recognised as refugees. It was unclear from the HRW summary as to what stage in the asylum process the remaining seven had reached and none of the cases provided information which would enable them to be identified. Moreover, only two of the 13 individuals alleged that they suffered mistreatment following return from the UK and in one of these two cases, the alleged mistreatment did not occur until six months after return when the individual was stopped at a checkpoint.
- 3.1.6 The 13 sets of allegations were considered as fully as possible, but in all cases required further investigation and did not warrant a halt to returns to Sri Lanka generally, or Tamils in particular.
- 3.1.7 FCO and UKBA officials held a meeting with HRW and FfT on 16 August 2012. At this meeting officials reiterated this position and explained the further details (name; date of birth and Home Office reference) of the individuals making the allegations of mistreatment on return would enable the Agency to check the asylum histories, establish whether there are any common factors shared by these cases and if any were subsequently granted asylum not on the basis that they had been mistreated on return to Sri Lanka.

⁴ This case is available on request.

⁵ [HRW: UK suspend deportations of Tamils to Sri Lanka](#)

- 3.1.8 At the same meeting FfT also listed around 30 cases of people who returned to Sri Lanka voluntarily, e.g. for family events, and had been subject to mistreatment. Officials explained that based on the limited and anonymous information provided by HRW and FfT, the Agency did not consider this sufficient evidence to change its policy on Sri Lankan returns. HRW accepted that they were not seeking a blanket suspension of all returns, but specifically of Tamils.
- 3.1.9 The Minister for Immigration wrote to HRW and FfT on 29 August 2012 setting out the position on returns and requesting that the details of Sri Lankans making the allegations be provided to the Agency by 4 September. To date none of the details requested have been received.
- 3.1.10 On 14 September 2012 HRW published the 13 anonymous allegations on their web site.⁶ The article mentions that the 13 allegations were sent to the Immigration Minister on 1 August, but fails to highlight the meeting of 16 August, nor the Agency's request for details of 29 August. HRW also published a press release calling on the UK to halt Tamil removals to Sri Lanka.⁷

3.2 Freedom from Torture (FfT)

- 3.2.1 The Freedom from Torture submission to the UN Committee against Torture, in its examination of Sri Lanka of November 2011, observed that the rate of referrals for medico-legal reports (MLR) to the FfT for Sri Lankans in 2011 had been similar to that of 2010 when they received 199 referrals. FfT received approximately 170 referrals for MLRs for Sri Lankans, these were during 2010 and the period January-September of 2011. From these referrals, 65 MLRs were produced [up to the time the submission was written] and a number were still in production. Of the 65 MLRs produced to date for Sri Lankan clients referred during this period, 35 document evidence of torture perpetrated from May 2009.⁸
- 3.2.2 Freedom from Torture (FfT) released its report "Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka"⁹ on 7 November 2011 detailing evidence of torture, which took place between May 2009 and early 2011 in the case sample of 35 completed medico-legal reports [of Sri Lankan asylum seekers in the UK].¹⁰
- 3.2.3 The FfT report commented that 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). 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 reported to have subsequently been 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

⁶ <http://www.hrw.org/node/110167>

⁷ <http://www.hrw.org/news/2012/09/15/united-kingdom-halt-deportation-flight-sri-lanka>

⁸ COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.13)

⁹ FfT Out of the silence: new evidence of ongoing torture in Sri Lanka.

¹⁰ COIS Sri Lanka country report March 2012 (para 25.40)

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. The remainder were detained at checkpoints elsewhere in the country or directly from the airport upon arrival.”¹¹

- 3.2.4 The Agency’s Country of Origin Information Service (COIS) produced a bulletin on 30 November 2011 which referred to 12 submissions made by NGOs to the UN Committee Against Torture, including those made by FfT. The bulletin also referred to the FfT report of 7 November 2011.¹²
- 3.2.5 The cases cited by FfT were considered by the Agency. It was noted that FfT referred to only three enforced failed asylum seeker (FAS) returns, of which only one was a UK case but whose return was from a third country, not from the UK. There is no mention of the circumstances of the 4th person. Whilst there were allegations of individuals with leave to remain in the UK, having been tortured after arrival, FfT did not provide evidence of FAS returned directly from the UK being ill treated.
- 3.2.6 On the 15th August FfT were written to regarding the allegations made by them of mistreatment and invited to the meeting of 16 August (see 3.1.7 to 9 above), which they attended. Despite requesting details which would assist UKBA, FfT have not provided these.
- 3.2.7 On 13 September 2012 FfT published on their web site a briefing containing 24 allegations of torture on return to Sri Lanka. This report was largely a duplication of the November report, which UKBA had considered and concluded this did not provide conclusive evidence as to a risk on return in general for failed asylum seekers. None of the cases in the report of 13 September are failed asylum seekers; 23 (status of one is unknown) allegedly had leave in the UK as students and / or dependents of students and had returned to Sri Lanka, when allegedly they were detained and tortured. All the individuals are alleged to have returned to the UK and to have now claimed asylum.¹³ Again these allegations are anonymous and UKBA has been unable to check the specific cases. FfT alleged that Tamils would be at risk on return to Sri Lanka because of ethnicity and the fact they had been resident in the UK.
- 3.2.8 FfT has not replied to the request for the details of the individuals making the allegations. Rather in footnote “9” to their briefing published on 13 September , they state “In a letter dated 29 August 2012, the Immigration Minister wrote to Freedom from Torture asking that we provide identifying details including the Home Office reference number for each of the cases we have reviewed for these purposes. However, in accordance with our standard practice, the findings of our research are presented in an aggregated format including because: (1) it would be inappropriate for Freedom from Torture to share details with the Agency about individual cases given that we are instructed as an independent expert witness, or may be so instructed, in most of these cases; (2) we are concerned to protect the individuals whose cases are included in the research and who may be easily identified if evidence is provided on a case by case basis; and (3) the objective of our research is to investigate patterns emerging from our evidence .“¹⁴

¹¹ [COIS Sri Lanka country report March 2012 \(para 25.41\)](#)

¹² [COIS 30/11/11: Recent reports on torture and ill treatment](#)

¹³ [FfT 13 September “ Tamils tortured on return from the UK”](#)

¹⁴ [FfT 13 September “ Tamils tortured on return from the UK”](#)

- 3.2.9 The explanation provided by FfT for not providing the information is not accepted by the Agency since:
- These are cases the Agency is said by FfT to be fully aware of as the individuals have made asylum claims;
 - The purpose of asking for details is to identify the individuals and determine the context of their claims and to establish any pattern to these.

3.3 Tamils Against Genocide (TAG)

- 3.3.1 On 15 December 2011 Tamils Against Genocide (TAG) sought in the High Court to have the charter flight (of December 2011) stopped on the basis that “the British government should reconsider its policy of returning any failed asylum seeker to Sri Lanka, pending its consideration of recently obtained NGO reports, in particular, the report of Freedom From Torture, formally the Medical Foundation for the Care of Victims of Torture, presented to UNCAT at the end of last month.” The judge rejected the application and found that “The assessment of the risk to Tamils of ‘certain practices’ ... can only be done on an individual basis.”
- 3.3.2 On 16 September 2012 TAG published a report “Returnees at Risk: Detention and Torture in Sri Lanka.”¹⁵ The TAG report states in its Executive Summary that “We contend the LP/TK risk factor of ‘a previous record as an actual or suspected LTTE member’ has been superseded in importance in the case of persons returning from abroad by a new risk factor, namely ‘a record of criticizing or protesting against the Sri Lankan government’. Similarly the risk factor ‘return from a ‘centre of LTTE activity or fund-raising’ should be refined to refer to ‘return from a country whose government or media have been critical of the Sri Lankan government and/or have called for progress towards accountability and reform.’ The Agency’s OGN already recognises that critics of the Sri Lankan authorities may be at risk. The categories within the OGN are those which form the basis of the majority of asylum applications and we would advise that any claim based upon UK activities is considered in line with [BA \(Demonstrators in Britain – risk on return\) Iran CG \[2011\] UKUT 36 \(IAC\)](#). Based on the numbers of UK returns and lack of any concern from international organisations, embassies and NGOs in Sri Lanka, we do not accept that return from the UK / Europe is in itself a risk category.
- 3.3.3 Whilst the FCO continues to comment adversely on the Human Rights situation in Sri Lanka¹⁶; the FCO country profile for Sri Lanka, accessed on 3 October 2012 states that “UK and Sri Lanka bilateral relations are good”, noting regular ministerial visits. Through the Department for International Development (DFID), the UK provided £13.5 million between 2008 and March 2011 in response to the humanitarian needs resulting from the conflict which ended in May 2009. Although this programme has now come to an end, a £3 million demining programme will enable more people to return safely to their homes and land in areas affected by the conflict.¹⁷
- 3.3.4 TAG state in their report that they rely on 27 recent asylum appeal determinations; of which 26 were of Tamil ethnicity and had returned voluntarily to Sri Lanka in the period 2010 to 2011.¹⁸ This is incorrect data even from the sample of 13 provided to date as three claims were not based upon any return incident. These are First Tier Tribunal determinations, which are relied on by TAG as ‘valuable as 26 of the 27 claims of egregious torture have succeeded and been found credible under the

¹⁵ [TAG: Returnees at Risk, Detention and Torture in Sri Lanka., 16/09/2012](#)

¹⁶ [FCO report 2011; Human Rights & Democracy, Countries of Concern: Sri Lanka](#)

¹⁷ [FCO Country Profile Sri Lanka](#)

¹⁸ [TAG: Returnees at Risk, Detention and Torture in Sri Lanka., 16/09/2012](#)

most stringent adversarial review. They provide us with the benefit of a valuable collection of judicial opinion.’ In themselves individual determinations are not sound evidence that all Tamils are at risk on return to Sri Lanka warranting a review of government policy on returns. Each asylum application is determined on its individual merits and a selective sample of determinations fails to take into account the fact that many claims of this nature are also refused. The report itself states at page 5 that TAG ‘have analysed torture allegations pertaining to 48 returnees in the period 2010 to 2012 of which 26 have been accepted by the UK courts.’ This shows that almost half of the asylum claims were not accepted and despite indicating that one of the 27 was not found credible, [page 6] no details as to this case have been provided. Consequently this report is inadequate in demonstrating that Tamils in general are at risk on return and that any LTTE association poses an additional risk.

3.4 Amnesty International

- 3.4.1 Amnesty International (AI) reported in June 2011 that the United Kingdom rejected 26 asylum seekers from Sri Lanka, most of whom were Tamil, and that when the returnees arrived in Colombo, they were taken for questioning. AI's Sri Lanka researcher is quoted as saying that ‘[t]he government of Sri Lanka has a history of arresting and detaining rejected Sri Lankan asylum seekers upon their return and we are aware of cases of people being tortured’. In a news item about the pending deportations issued on 16 June [2011], the day before the deportations, the same researcher is also quoted as saying that ‘the end of the armed conflict in Sri Lanka in May 2009 has not diminished the risks faced by rejected Sri Lankan asylum seekers, who continue to be subjected to arrest and detention upon their arrival in Sri Lanka’.¹⁹
- 3.4.2 In October 2011, Amnesty International stated that “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”.²⁰
- 3.4.3 The Upper Tribunal considered the evidence from AI in February 2012 when it also considered the allegations from HRW and FfT (see 3.1.2 above) and concluded that they lacked substance.

4. Use of Torture in Sri Lanka

- 4.1 The Torture Act has rarely been used to prosecute acts of torture, despite reports of widespread torture in Sri Lanka. To date, there have only been three convictions under the Torture Act in Sri Lanka. According to the Asian Human Rights Commission (AHRC), the government has stopped investigating cases of torture as a matter of policy, and since 2009 no cases have been investigated or prosecuted. Part of the problem is the lack of an effective investigation mechanism, in violation of Article 12 of the Convention Against Torture. Complaints under the Torture Act must be submitted to the Attorney Generals Department. The former practice was for the Department to refer cases to the Special Investigations Unit of the Criminal Investigation Division, which reported back to the Attorney Generals Department for consideration of filing indictments. In 2009 these referrals were discontinued as a matter of policy and no new mechanism has been established. Further problems

¹⁹COIS Sri Lanka country report March 2012 (para 25.50) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁰ [Amnesty International, Sri Lanka: Briefing to Committee Against Torture, October 2011, 3. Torture and Ill-Treatment, Risk of Torture for Failed Asylum Seekers.](#)

include insufficient evidence, due to intimidation of victims and witnesses, a lack of thorough investigation by the police as well as delays in prosecution.²¹

- 4.2 In its report “Police Torture cases 1998 to 2011 Sri Lanka”- 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.”²²
- 4.3 The Lawyers Rights Watch Canada stated that the Government of Sri Lanka is clearly not ready, willing nor capable of fully implementing the Convention against Torture into its domestic law. In the past few months, Sri Lanka has come under increasing pressure to investigate credible allegations of torture, war crimes and crimes against humanity. However, the Government of Sri Lanka has refused and ignored the repeated calls made by the international community for an investigation into these allegations. To date, Sri Lanka has failed to address these concerns and shows no plans of doing so in the near future. At the core of the persistence of the problem of torture in Sri Lanka is the prevailing culture of impunity.²³
- 4.4 The UK’s FCO commented in its 2011 Human Rights report, published April 2012 on the issue of torture within Sri Lanka “The Lessons Learnt & Reconciliation Commission (LLRC) expressed alarm at the large number of alleged abductions, enforced or involuntary disappearances, and arbitrary detention. It raised concern over instances of people detained in custody for long periods of time under the Prevention of Terrorism Act. All cases pointed to the use of blunt-force trauma, with some signs of burning, threats and forced confessions. The Sri Lankan government claims that it maintained a zero-tolerance policy on torture. The National Human Rights Action Plan marks prevention of torture as an area of priority, including safety of suspects in custody, victim and witness protection and ensuring that rules relating to evidence do not inadvertently promote torture.”²⁴
- 4.5 The same report noted that “The Sri Lankan government continued to focus on post-conflict reconstruction, and made progress in returning internally displaced persons to their home areas and in releasing former Liberation Tigers of Tamil Eelam (LTTE) fighters”.²⁵
- 4.6 The June 2012 report “When arbitrariness prevails: a study of the phenomenon of Torture in Sri Lanka” by ACAT-France, in collaboration with the Asian Legal Resource Centre, it is stated “Torture is used by security forces across the country to, for example, extract information, obtain false confessions to close criminal cases or extort money or favours. Furthermore, the situation is worrying for those suspected of having ties with the LTTE. They are arrested and detained, sometimes in secret, for an unlimited period without access to a lawyer or their families.”²⁶

²¹ COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.36)

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

²² [COIS Bulletin November 2011 para 8.52](#) (Sri Lanka: A report on 323 cases of police torture, 24 June 2011)

²³ COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.21)

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

²⁴ [UK FCO Human rights report April 2012, Countries of Concern, Sri Lanka](#)

²⁵ [UK FCO Human rights report April 2012, Countries of Concern, Sri Lanka](#)

²⁶ [ACAT-France report June 12: “Torture in Sri Lanka”, Executive Summary](#)

- 4.7 The same ACAT report notes “Torture can affect anyone, whatever their social standing, profession, ethnicity, age or religion. A business man, a lawyer or a soldier can find themselves victims of an act of torture. Nonetheless, the overwhelming majority of cases of torture affect people from impoverished backgrounds who are more vulnerable to the authority of an official because of their lack of political or economic influence and their inability to fight against injustice or an abuse of power. The phenomenon of torture also affects Sinhalese groups as much as Tamils.” The report also notes the HRW allegations of February 2012.²⁷
- 4.8 Amnesty International in its 2012 report “Locked away: Sri Lanka’s security detainees” commenting on detentions at the end of the 2009 conflict states “Those who admitted links to the LTTE and who did not appear to investigators to be “hard core” or important LTTE leaders were detained for “rehabilitation”. Individuals who seemed uncooperative or were suspected to be lying were tortured in Vavuniya, and then transferred south for further interrogation by the CID or TID in Colombo”.²⁸

5. UN Committee Against Torture

- 5.1 The UN Committee against Torture (UNCAT) stated that they remain seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. The Committee is further concerned at reports that suggest that torture and ill-treatment perpetrated by state actors, both the military and the police, have continued in many parts of the country after the conflict ended in May 2009 and is still occurring in 2011.²⁹

6. UNHCR returns:

- 6.1 A UNHCR press release of 27 April 2012 stated that they had assisted the voluntary return of 1,728 Tamils in 2011 and 408 in the first quarter of 2012. Most refugees are returning from government-run camps in the South Indian state of Tamil Nadu. Small numbers have also returned from Malaysia, Georgia, Hong Kong and the Caribbean Island of St. Lucia. Refugees are mainly returning to Trincomalee, Mannar and Vavuniya districts with smaller numbers returning to Jaffna, Kilinochchi, Batticaloa, Colombo, Ampara, Puttalam and Kandy.³⁰
- 6.2 A similar press release of 6 January 2012 highlighted that UNHCR had returned 2,054 in 2010 and 818 in 2009. The article goes on to say that “UNHCR carries out regular monitoring in these areas and seeks to ensure that returnees receive mine risk education and are included in the food ration lists and become considered as beneficiaries to the many government, UN and other projects taking place to re-establish the lives of Sri Lankans in the North and East of the country.”³¹
- 6.3 The same article stated, “Sri Lankan refugees abroad who wish to return home can approach the closest UNHCR office for assistance in their country of asylum. UNHCR’s most recent statistics, gathered from governments, show that as of end-2010 there are some 141,063 Sri Lankan refugees in 65 countries, with a majority -

²⁷ [ACAT-France report June 12: “Torture in Sri Lanka”, Executive Summary](#)

²⁸ [AI: Locked Away Sri Lanka’s security detainees, 2012](#)

²⁹ UN Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, 31 October 2011- 25 November 2011 http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.doc

³⁰ [Sri Lankan refugee returns lower in first quarter 2012](#)

³¹ [Sri Lankan refugee return figures fall in 2011, amidst suspension of ferry service](#)

some 69,000 in 112 refugee camps and another 32,000 living outside camps in Tamil Nadu, India. The other main countries with Sri Lankan refugees are France, Canada, Germany, UK, Switzerland, Australia, Malaysia, the United States and Italy.³²

- 6.4 An IRIN article of 30 August 2012 stated that “The government [of Sri Lanka] is keen to welcome thousands of ethnic Tamil Sri Lankan refugees home after two and a half decades, Noting, however, that Colombo’s current priority is the resettlement of those who were internally displaced in the final stages of the decades-long civil war which ended in May 2009.”³³ This message is repeated in a Sri Lanka Daily Mirror article of 2 September 2012, which stated “The government said it will welcome more Tamil refugees who fled the country to India and want to return home after nearly three decades of war with the LTTE, a top minister has said. “They have been returning from time to time, in small groups. My ministry along with the defence ministry would jointly welcome them if more want to return. They could be resettled in their places of origin,” resettlement minister Gunaratne Weerakoon stated.”³⁴
- 6.5 In the Danish Fact Finding Mission of 2010, the Danish Immigration Service reported: “UNHCR informed the delegation that the organisation is not technically involved in any monitoring of non-refugee returnees from abroad. UNHCR monitored refugee returnees including the approximately 750 who had voluntarily repatriated from India with UNHCR assistance this year. Some of these returned refugees who are met at the airport by UNHCR had undergone questioning at the airport, including questioning by CID, but there had been no incidents of detention.”³⁵
- 6.6 There is no evidence from UNHCR as to any risk on return to Sri Lanka for Tamils per se. Their programme of voluntary assistance from India and other countries, where Tamils, settled during the conflict, indicates they deem it safe to return Tamils and the priority is to ensure that they are recipients of the various aid programmes to re-establish themselves. Returnees from India are not failed asylum seekers; however this is relevant as the allegations are that all categories of Tamil returnees to Sri Lanka are at risk.
- 6.7 There is evidence³⁶ that the LTTE operated from India where they were listed as a terrorist organisation.³⁷ Yet despite the immense numbers of Tamils from Sri Lanka within India and the evidence from UNHCR of questioning by the Criminal Investigations Department (CID), there have been no reported detentions.

7. International Organization for Migration (IOM):

- 7.1 A number of the HRW allegations state that individuals were deported from West African countries to Sri Lanka.
- 7.2 The British High Commission (BHC) Colombo in a letter dated 6 September 2012 confirmed that many Sri Lankans have been taken by agents to West Africa on route to Canada and left stranded there; however no West Africa country has the capability to undertake enforced removals.³⁸

³² [Sri Lankan refugee return figures fall in 2011, amidst suspension of ferry service](#)

³³ [Sri Lanka: Government welcomes refugees repatriation from India.](#)

³⁴ [SL ready to welcome Tamil refugees](#)

³⁵ [Danish Immigration: Fact Finding Mission to Sri Lanka 2010.](#)

³⁶ <http://www.asiantribune.com/news/2010/06/21/three-more-suspected-ltte-cadres-arrested-q-branch-police-5330-detonators-recovered>

³⁷ <http://www.satp.org/satporgtp/countries/india/terroristoutfits/index.html>

³⁸ The BHC letter of 6 September is available on request .

7.3 The same letter clarified that the IOM operate a voluntary return scheme from West Africa; this scheme is funded by the Canadian Government.³⁹

8 Other asylum intake states

8.1 As the UNHCR press release of 6 January 2012 stated there are “Sri Lankan refugees in France, Canada, Germany, UK, Switzerland, Australia, Malaysia, the United States and Italy.”⁴⁰

8.2 In February 2012 the Inter Governmental Consultation (IGC) on Migration, Asylum and Refugees carried out a survey on Sri Lankan asylum applications and returns amongst its participating members on behalf of the UK.⁴¹ Members were asked Q9 “Are you aware of any reports or allegations that voluntary or forced returnees have faced difficulties or been mistreated on return to Sri Lanka? If so, what was the nature of these difficulties or (alleged) mistreatment?”

8.3 In response to this question: Australia commented that in September 2010, AI and the Asian Human Rights Commission issued media releases alleging that three failed asylum seekers returned from Australia in 2009 were detained and tortured. The claims were investigated by the Australian High Commission and Australia was satisfied that it had not breached its non refoulement obligations. Of 12 other asylum intake countries, eight were not aware of any ill treatment of returnees, one country had not undertaken returns to Sri Lanka recently due to low numbers; two do not disclose information and two referred to Danish and Canadian fact finding missions.

8.4 In the Danish Fact Finding Mission of 2010, the Danish Immigration Service reported:

- UNHCR did not have any particular information on the situation in the East for non-refugee returnees from abroad. UNHCR did monitor refugees returning from India to the East. UNHCR commented that there has been no evidence that returnees have been particularly targeted. The main concern for returnees is now related to land and livelihoods.
- As regards security for LTTE members and supporters returning from abroad, a diplomatic mission stated that it is still difficult to assess whether they will be at risk. Some LTTE supporters have returned to their daily lives and do not seem to be at risk.
- “The Norwegian Embassy did not have any examples of people who had returned to the North/ Jaffna recently, but mentioned that many people from Jaffna who are now Norwegian citizens travel on frequent basis to the North. A diplomatic mission commented that there had been voluntary returns from abroad to the North; no incidents have been reported so far.”
- Commenting in section V11 on “Profile of groups at risk of detention [at the airport on return] the report does not highlight any incident comparable to the allegations being made by HRW and FfT. It also states “there is in general no difference in the way Tamil and Sinhalese people are treated at the airport, and there are also examples of Sinhalese human rights defenders who have been detained for investigations.”⁴²

9. Returns from the UK

³⁹ The BHC letter of 6 September is available on request.

⁴⁰ [Sri Lankan refugee return figures fall in 2011, amidst suspension of ferry service](#)

⁴¹ The IGC survey is available on request.

⁴² [Danish Immigration: Fact Finding Mission to Sri Lanka 2010.](#)

9.1 Data on returns

9.1.1 Removals and Voluntary Departures of nationals of Sri Lanka to Sri Lanka in the period January 2011 to June 2012.⁴³

Year	Total removals and voluntary departures, including port cases	Asylum removals	Non asylum removals
2011	886	431	455
2012 Qtr 1	284	118	166
2012 Qtr 2	246	115	131

9.1.2 Consequently in the 18 month period, January 2011 to June 2012, the total number of Sri Lankan nationals, who returned to Sri Lanka from the UK has been 1416. It is important to consider total number of departures as allegations centre on those with legal status in the UK, i.e. the inference is that anyone might be at risk.

9.2 Charter flights

9.2.1 Charter flights allow UKBA to carry out volume returns to countries where asylum intake is high or where there are a significant number of foreign national prisoners awaiting return. This also makes charter flights a cost effective option in some circumstances. Sri Lanka is such a country and UKBA removes by both scheduled and charter flights

9.2.2 The British High Commission (BHC) in Colombo maintains a close oversight of the returns process. As regards charter flights officials from the BHC have put in place provisions to facilitate returns through the airport, enabling returnees to clear security checks quickly. Post arrival assistance is offered via the International Organization for Migration (IOM) to every charter returnee, whereby individuals are given the equivalent of £50 to travel from the airport to their home area. In addition, every returnee is provided with the contact details of the BHC in Colombo should they want to make contact with our Migration Delivery Officer (MDO) based there.

9.2.3 After each charter flight the MDO produces a detailed report in letter format stating all the events from flight arrival until the last returnee has cleared the immigration and security controls and is able to depart for home. These letters are usually published on the Agency's web site in either the country of origin information report for Sri Lanka, or in bulletin form.

9.2.4 The FCO reported in a letter of 27 September detailing the charter flight of 19 September that "Two male returnees remained with CID and were advised that they were to be further questioned by the Terrorist Investigation Department (TID). The TID officer in-charge informed BHC officials that the two individuals were previously involved with the LTTE. It was suspected that the two were not rehabilitated prior to departing the country. Authorisation was therefore sought from TID headquarters in Colombo to verify their clearance. At 1650hrs a TID officer received a telephone call and announced that the two returnees were free to leave the airport and that they would not be arrested or detained for further enquiries. Both returnees proceeded to

⁴³ Statistics are published on the Home Office web site: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/>

the baggage reclaim area accompanied by officials from TID, IOM and the BHC. At 1710 both returnees exited the Customs area.”⁴⁴

10 Monitoring

- 10.1 The UK is under no obligation to monitor the treatment of individual unsuccessful asylum seekers who have returned to their country of origin. Nor does the UK have any ongoing responsibility for monitoring returnees. They are, by definition, foreign nationals who have been found as a matter of law not to need the UK’s protection and who had no legal basis of stay in the UK. It would be inappropriate for the UK to assume any ongoing responsibility for them when they return to their own country. Active monitoring of returnees in many countries could, of itself, place the individual at risk.
- 10.2 The Foreign & Commonwealth Office (FCO) follows the human rights situation through its network of posts around the world, including in the countries to which we return unsuccessful asylum seekers. They will pass to the Agency any general information suggesting that returnees have been mistreated. Such information will always be taken fully into account in country policy formulation and hence in the decision whether it is safe to return an individual. If UKBA receives any specific allegations that a returnee has experienced ill-treatment on return to their home country, then these would be checked, including through the FCO who where necessary will make discreet enquiries, often through NGOs or other third parties.

11 Case law

11.1 Country Specific case law

- 11.1.1 Up to date case law for Sri Lanka is provided in the Sri Lanka Operational Guidance Note (OGN) of April 2012.⁴⁵
- 11.1.2 The UK government believes that the right approach is to consider the needs of individuals on their particular circumstances. With regard to Sri Lanka, this view was endorsed by the European Court of Human Rights in the case of NA v UK 2008, and the Asylum and Immigration Tribunal in October 2009 (TK).
- 11.1.3 The more recent ECHR determination in the case of EG v United Kingdom, Sri Lanka [2011] refers directly to the judgment reached in TK and makes further observations:
- namely that the general situation and the applicant’s own circumstances are to be taken into account and the assessment is made of the circumstances at the time of the proceedings: It is the present conditions which are decisive” (paragraph 66).
 - The judgment further endorsed the findings reached in TK and the Court also noted that: “the general situation in Sri Lanka was now less conducive to continued interest in failed asylum seekers” (paragraph 76).
- 11.1.4 The UK Border Agency believe the findings reached in EG to be significant and this latest judgment again concludes that Tamils who were not high level activists within the LTTE or who were only perceived to have a previous association with the LTTE would not be likely to be of adverse interest to the Sri Lankan authorities upon their return.

⁴⁴ A copy of this letter is available on request.

⁴⁵ [UK Border Agency Operational Guidance Note \(OGN\) for Sri Lanka April 2012.](#)

11.2 Case law relating to allegations.

11.2.1 The issue of allegations made about mistreatment on return was thoroughly considered by the then Asylum and Immigration Tribunal in 2007 in the case of **BK (Failed asylum seekers) DRC (Rev 1) CG [2007] UKAIT 00098 (31 October 2008)**. This case was then upheld by the Court of Appeal in December 2008.

11.2.2 The Court concluded in **BK** that:

“Given the great deal of time and effort that the appellant's representatives have put into this case, it is appropriate that we make clear the following. In the event of any future investigations being conducted of returned failed DRC asylum seekers, those concerned should take steps to ensure that basic relevant particulars are sought. Public funds, not to mention valuable judicial resources, are involved and must not be expended uselessly. In particular, we consider that where someone is known to have been a failed asylum seeker in the UK, initial efforts should be directed to obtaining (with authorisation) details of that person's asylum claim and the outcome of any appeal. As vividly illustrated by the case of WY that would at least ensure that the investigations into their claims about abuse on return have some external reference point for gauging the truth of what is now claimed” (paragraph 386).

11.2.3 This case emphasises that for allegations of mistreatment on return, irrespective of country, then to ensure the effective use of public funds, the details of failed asylum seekers should be obtained in order that claims about abuse on return have some external reference point for gauging the truth of what is now claimed.

11.3 Unreported determinations

11.3.1 The court stated in **AD (reporting criteria –unreported cases) Somalia [2011] UKUT 00189(IAC)** that :

“Given the criteria for reporting cases and the process of preparing decisions for reporting, it is likely to be rare that an **unreported** decision will contain sufficient material within it to offer significant assistance as guidance to decision-makers, practitioners or other judges in other cases.”

12 “New” risk category

12.1 On 18 September before Mr Justice Wilkie in the High Court representatives for Freedom from Torture/Claimant's submitted that:

- That the new FFT report (of 13th September) setting out details of those who have been returned from the UK and tortured in Sri Lanka presented new evidence that it was not safe for any Tamil to be returned to Sri Lanka as they would be perceived as being associated with the LTTE - whether or not there had been a history or either a perceived or real association recorded previously. The main thrust for this line appeared to be the fact that demonstrations had taken place in the UK and that the UK was seen to be a place where Tamils arranged financial support for LTTE. Therefore anyone returning from the UK would be questioned and is at risk of torture.
- Counsel for the claimants then stated that the report extended the categories of risk to students and those who have previously had no real/perceived

association with LTTE generally- that risk applied to any Tamil forcibly returned from the UK.

- 12.2 Mr. Justice Wilkie agreed that for the purposes of the interim hearing only that there was a new category of risk identified in the FFT report and it should be properly considered on all applications for interim relief. He stated that in his judgment the report was careful not to say that everyone who is being forcibly return from SL is at risk. It describes those who are at risk are Sri Lankan Tamils who have a real or perceived LTTE association and that they have resided in the UK. He further stated that there must be compelling evidence of this association. This was the new category of risk which he was prepared to accept for the purposes of hearing interim relief applications only
- 12.3 LP (LTTE area – Tamils – Colombo – risk? Sri Lanka CG) [2007] UKAIT 00076 had already accepted as a risk category those who had (a) “Previous record as a suspected or actual LTTE member or supporter” and (b) “Returned from London or other centre of LTTE activity or fund raising”. The risks categories in LP were then reaffirmed in TK (Tamils – LP Updated) Sri Lanka CG [2009] UKAIT 00049. However as the Immigration and Asylum Upper Tribunal also noted in TK “(paragraph 6)... “country guidance is not inflexible; it must be applied by reference to new evidence as it emerges”.
- 12.4 The OGN for Sri Lanka of April 2012 reflects the risk categories identified by the courts in its consideration of the main categories of asylum applications from Sri Lankan nationals.

13 Conclusions

- 13.1 The country evidence (see section 4) indicates extensive research into torture in Sri Lanka and concludes that in general the acts of torture are random and usually used to extract confessions. As reflected in the OGN for Sri Lanka, the Agency accepts that ill treatment amounting to torture does exist and that certain categories of individual by the fact of their profile, or by accumulative risk factors, might be at risk. This is in accord with existing UK and European case law. The Agency does not accept that Tamils in general would be at risk on return to Sri Lanka. This position was also supported by Mr Justice Wilkie at the injunction hearings for the September charter flight. It is noted that the FCO reported that two returnees on the flight of 19 September [see section 9.2.4] were detained for suspected LTTE links by the Sri Lankan authorities on arrival, but were released within four hours of the other returnees departing from the airport.
- 13.2 HRW and FfT have refused to provide the Agency with the details of the individuals making the allegations, despite the fact they are stated to be in the asylum process. Without these details, the Agency is only able to reach conclusions on the evidence before us. Given that each asylum application is determined upon its individual merits, it is not feasible to reach definitive findings on the generalised evidence as submitted by FfT, HRW and TAG.
- 13.3 Some of the cases referred to by FfT and HRW (see section 4.4.2) are within the time frame covered by the Asian Human Rights Commission (AHRC), however the profile of the victims of torture highlighted by the AHRC is quite distinct from those mentioned by FfT and HRW. Nor do the profiles in the other reports match any of the allegations now being made in the UK. Even if credible the allegations made by HRW and FfT in statistical terms are a minute fraction of the total returns

undertaken by the UK to Sri Lanka in the past three years and do not in isolation provide sufficient evidence to warrant a halt to all Tamil returns.

- 13.4 It is noted that the FfT report of 13 September duplicates much of the information contained in the earlier report of November 2011. The cases are all students/ spouses and not failed asylum seekers returned from the UK. The individuals citing the FfT claims are all alleged to have had legitimate visas for leave in the UK; consequently it is impossible to extrapolate their general findings to conclude with any degree of certainty that failed Tamil asylum seekers per se are at risk.
- 13.5 HRW cite only two returns from the UK out of their 13 documented and in one of these two cases, the alleged ill treatment occurred some six months after return. This evidence does not demonstrate that returnees per se from the UK are at risk.
- 13.6 As regards the TAG report, this provides only a selective sample of determinations, there is no consideration of dismissed appeals, and does not enable any definite conclusions to be drawn. In themselves individual determinations are not sound evidence as each asylum application is determined on its individual merits. It is noted that of the 13 determinations submitted to the Agency, three of the claimants did not base their asylum claim on mistreatment after a return to Sri Lanka from the UK and a third case was a voluntary return from Switzerland, whose alleged ill treatment occurred 5 months after return. Consequently this report is inadequate in demonstrating that Tamils in general are at risk on return and that any LTTE association poses an additional risk.
- 13.7 The BHC is closely involved in the returns process. The BHC, embassies of other countries, or NGOs within Sri Lanka, have not reported issues of concern regarding returns from Europe, the UK in particular. It is noted that both UNHCR and IOM operate programmes of voluntary returns; UNCHR facilitates these from India where the evidence is of support previously for the LTTE and yet no issues have been reported as regards mistreatment on return.
- 13.8 For the reasons stated above the Agency does not accept that the evidence published in September by FfT, TAG or HRW supports their assertion that a change in the Agency's policy on returns to Sri Lanka is warranted. The courts have stated that country guidance case remains authoritative until it is replaced by a new CG case or there is a clear difference in country conditions, warranting a deviation from the existing law.
- 13.9 Consequently case owners should continue to apply the law in EG and consider the present conditions in Sri Lanka (see OGN). A key question in light of improvements in the overall security situation remains whether any past involvement in the LTTE, actual or perceived, is currently likely to bring returnees to the adverse attention of the Sri Lankan authorities. Each case should be considered carefully on its own facts.

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