



3rd May 2012

A commentary on the April 2012 Sri Lanka Operational Guidance Note

This commentary identifies what the 'Still Human Still Here' coalition considers to be the main inconsistencies and omissions between the currently available country of origin information (COI) and case law on Sri Lanka and the conclusions reached in the April 2012 Sri Lanka Operational Guidance Note (OGN). Where we believe inconsistencies have been identified, the relevant section of the OGN is highlighted in blue.

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

This commentary is a guide for legal practitioners and decision-makers in respect of the relevant COI, by reference to the sections of the Operational Guidance Note on Sri Lanka issued in April 2012. To access the complete OGN on Sri Lanka go to:

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

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

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

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3.6 Fear of persecution by the Sri Lankan authorities

Tamil ethnicity

It is a welcome development that COI has now been included in this section of the OGN that better documents the range of abuses that Tamils experience as is reported in the public domain. Issues of particular relevance now included in this section are: the on-going disproportionate impact of the 'Emergency Regulations' on persons of Tamil ethnicity, especially those perceived to support the LTTE; the on-going surveillance and harassment of Tamils released from the 'rehabilitation centres'; beatings committed by the security forces; and attempts to forcibly relocate Tamil communities. The following illustrative COI from 2012 not included in the OGN continues to document these practices. This recent COI is particularly relevant given that the conclusion of this section of the OGN (see below) relies heavily on the findings of [E.G v United Kingdom Sri Lanka \[2011\] 41178/08 \[2011\] EC HR 846](#) which reconfirms [TK \(Tamils – LP updated\) Sri Lanka CG \[2009\] UKAIT 00049](#) which was promulgated back in December 2009:

➤ [TamilNet, 220 Tamils arrested in SLA combing in Trincomalee, 25/04/2012](#)

[...] The occupying Sri Lanka Army and Police, backed by special teams of the 'Terrorist Investigation Department' from Colombo, have been entering selected houses in the villages of Trincomalee district, detaining ex-LTTE members since Saturday evening. The SL forces have detained around 220 Tamil males and females from their houses. The detained men have been taken to Welikande and the females have been taken to Poonthoaddam in Vavuniyaa, informed sources told TamilNet Wednesday. Ex-LTTE members who had left the movement more than 10 years ago have also been detained. The arrested also include returnees from Tamil Nadu and those who have been detained earlier and released for reunification with their families. While India and the West talk only about the North nowadays, the operations of genocidal Colombo in the East largely go unnoticed.

The SL Police said 160 persons have been detained, but civil sources said at least 220 persons have been taken from their houses in Cheanapuram, Ki'liveddi welfare centre, Paddimeadu, Kumpu'rup-piddi, Thampalakaamam, Anpu-vazhi-puram, Paalaiyoottu, Nilaave'li, Panku'lam and Eechchilam-pattu. The search operations have been going on during nights. [...]

Anyone who have 'failed' to go through the SL government 'rehabilitation programme' would be sent to welfare centres and would be registered as former cadres of LTTE, the SL police sources further said. But, the civil sources said the members who have earlier undergone such programmes have also been detained once again. Only some of the families have received, 'confirming' the detention of their family members. Even such papers are said to be 'unofficial' and cannot be used in legal context, according to the affected families. [...]

➤ [TamilNet, SL military's draconian 'civil' rule hardens further in Vanni, 15/04/2012](#)

[...] Former LTTE members, who have been released by the SL military after custody, are being harassed for a long time. Some of them have been abducted and the families are instructed not to give away details of such abductions. But, in a new development, the wives and family members of the former LTTE members who are still detained at undisclosed locations, are being repeatedly summoned to SL military camps and are being harassed in the name of questioning. Their frequent visits forced by the occupying military also cause social stigma to them, the sources further said. [...]

➤ [TamilNet, Resettled Tamils threatened in Ampaa'rai - Batticaloa border, girl kidnapped, 13/04/2012](#)

[...] Around one hundred and fifty uprooted Tamil families of Chinna-vaddai, a village situated in the Poara-theevup-pattu division of Batticaloa district, bordering Uhuna village of Ampaa'rai district, complain that they are being harassed by the Sinhala paramilitary personnel and settlers, who have occupied their village for 22 years, since 1990. A Sinhala electricity worker, who came to the village from Kurunegala two weeks ago, abducted a 17-year-old Tamil girl forcing her to marry him, complain the family of the girl and

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her relatives. In the meantime, the Sinhala paramilitary men of the 'Civil Defence Force' have been harassing the Tamil families, who have recently resettled in the village. The CDF men are plundering fish and vegetables belonging to returnees at gunpoint and are warning the Tamils to vacate the village. [...]

➤ [TamilNet, SL military conducts search operations in Trincomalee, 10 Tamils detained, 07/04/2012](#)

[...] At least ten Tamils have been taken into custody by the occupying Sri Lanka Army and SL Police in cordon and search operations in Trincomalee district on Friday. The victims, detained by the SL Army include uprooted persons recently returned from Tamil Nadu and former LTTE cadres 'rehabilitated' and released by the SLA. Villagers from remote areas of the district said that around 600 to 700 members of SL Army and SL Police were involved the house-to-house search operations and that they took the males for interrogation to their camps in the presence of their wives and children. [...]

The arrested persons are detained in army camps without any investigation and those returned from South India for resettlement are sent to welfare centres. [...]

➤ [TamilNet, UK deportee killed while Tamil Nadu returnees arrested in Trincomalee, 28/03/2012](#)

[...] A 28-year-old Tamil man, recently deported from UK was found killed in Trincomalee on 18 April, news sources in the district told TamilNet Saturday. In the meantime, in a systematic combing operation launched by the special units of Colombo's military and police establishments, up to 300 Tamil males and females have been 'arrested' and sent to military detention camps in Welikanda and Vavuniyaa since last Saturday. Among the victims are also people who have recently returned from Tamil Nadu and they too have now ended up in Welikanda and Vavuniyaa, the sources in Trincomalee further said.

Easwarathasan Ketheeswaran, forcefully sent back from UK in 2010, was living alone at Paalaiyoottu in Trincomalee city. Completing hotel management studies, he was making arrangements to leave the island seeking foreign employment. His wife is living abroad in UK.

On 18 April, he was visiting his aunt and went out for shopping. When he returned he had reportedly told his relatives not to go out as strange persons were wandering around the house. But, he was killed when he left the house later, the sources said.

Last year, SL military establishment let lose a so-called 'Greese devil' violent campaign threatening the security of Tamil women in the island.

The 'white-van' disappearances are a well-known legacy of the Rajapaksa regime. But, the present trend seems to be the use of knife. Another foreign returnee from Qatar was knifed to death by a motorbike squad in a Sri Lanka Army camp in Vadamaraadchi on Tuesday.

Meanwhile, last week, the military and police units that had come from Colombo to launch the combing operations in the district were having lists of recently deported people from abroad, the details of returnees from Tamil Nadu and details of ex- LTTE members who were released by them earlier, the sources further said.

Although the official explanation for the combing operations by the SL military was that it was targeting former LTTE members who had not undergone SL government 'rehabilitation' programme, the arrests that have taken place during the nights in the past week have also targeted those who were not members of the LTTE, civil sources further said. [...]

At Kumpu'rup-piddi alone, more than 40 Tamils have been arrested and sent to detention by the genocidal Sri Lankan military. [...]

➤ [International Crisis Group, Sri Lanka's North I: The Denial of Minority Rights, 16/03/2012](#)

[...] EXECUTIVE SUMMARY

Deepening militarisation and the lack of accountable governance in Sri Lanka's Northern Province are preventing a return to normal life and threaten future violence. Scene of the most bitter fighting in the civil war, the Tamil-majority north remains under de facto military occupation, with all important policies set by Sinhala officials in Colombo. The slow but undeniable movement of Sinhala settlers into the fringes of the north and other forms of government-supported "Sinhalisation" are reigniting a sense of grievance and weakening chances for a real settlement with Tamil and other minority parties to devolve power. [...]

Sinhala fishermen and businessmen are regularly given advantages not accorded to Tamils. The slow but steady movement of Sinhala settlers along the southern edges of the province, often with military and

central government support and sometimes onto land previously farmed or occupied by Tamils, is particularly worrying. These developments are consistent with a strategy – known to be supported by important officials and advisers to the president – to change “the facts on the ground”, as has already happened in the east, and make it impossible to claim the north as a Tamil-majority area deserving of self-governance. [...]

III. MILITARY RULE: CONTROLLING THE POPULATION [...]

A. REGISTRATION AND SURVEILLANCE

The military has regularly and forcibly registered and photographed Tamils in all five districts of the north, particularly in Jaffna and Kilinochchi.⁶⁰ Objecting to the practice as discriminatory, TNA members of parliament filed suit in the Supreme Court in February 2011 to have the practice ended.⁶¹ In a hearing on 3 March, the attorney general of Sri Lanka assured the court that the army would stop the forced registration, which was conducted at the time under the authority of emergency regulations. In response, the TNA MPs withdrew their petition.⁶² Within weeks, however, registration had restarted, and it continues today.⁶³ [...] The presence of tens of thousands of soldiers and hundreds of checkpoints and camps gives the military the ability to monitor the movements and activities of all residents. The army is aware of, and often actively involved in responding to, even the smallest of local-level problems and events.⁶⁸ In the Vanni it is still not possible to have a meeting of four or more people without the permission – and often the attendance – of local military officials. In addition to its overt methods of surveillance, the army also maintains a large network of informers among the population in the north, some from the pool of recently released detainees.⁶⁹ “Within communities in the north you have people making use of the new power structure to tell stories about others and get favours from the military”, explains a humanitarian worker. “These are often the same people who were very subservient to the LTTE”.⁷⁰ Other Tamils, including more hard-core ex-LTTE, are working more formally, if secretly, for military intelligence and other intelligence organisations.⁷¹ [...]

B. MONITORING OF “REINTEGRATED” LTTE SUSPECTS AND EX-COMBATANTS

One group that is watched particularly closely, even as some are used as sources of information and control, are suspected former LTTE members who have been released from the government’s “rehabilitation” centres. [...] It has been widely reported, and confirmed by first-hand accounts, that former detainees have been welcomed home by a regime of regular and tight surveillance.⁷⁹ This has included regular required reporting to local police and military camps, restrictions on free movement, and frequent additional and intensive interrogations by various different state agencies, often in arbitrary and intrusive ways.⁸⁰ Some ex-detainees have been re-arrested;⁸¹ many more are believed to have been pressured to act as informants by the military. There is no system of independent monitoring of their treatment or protection. [...]

VI. LAND POLICY AND THE LEGAL AND POLITICAL SOURCES OF CONFLICT

Many of those returning to the north, both “new” and “old” IDPs, face a range of obstacles to settling back on their land, some of which risk provoking serious conflict. Examples above reveal how both long-established High Security Zones and newly established military camps have seen private and state land seized by the military or other government departments, often without legal basis and without owners being given compensation or replacement land.²³⁰ There are also regular accusations of people being forced off or denied use of state land (for example, coastal land for fishing) after it was given to government politicians and politically connected businesses.²³¹ [...]

➤ [TamilNet, Sinhala gang attacks Tamil residents in Trinco suburb. 29/01/2012](#)

[...] Four Tamil residents of Vinaayagapuram, a suburb in Trincomalee town, were injured, including one with severe injuries, when a gang of Sinhalese attacked them on Saturday evening around 6 p.m, sources in Trincomalee said. Thurainayagam Sanjeevan, 32, an employee of the Trincomalee office of a leading Tamil daily Virakesari, is in critical condition and has been admitted to the Trincomalee General Hospital. Other injured Tamils were discharged from the hospital after treatment, hospital sources said. The attackers had threatened the Tamil residents to vacate the village, according to the injured residents. [...]

➤ [TamilNet, Colombo backed Muslim group threatens Tamils to leave their lands in Batticaloa, 25/01/2012](#)

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[...] A gang of Tamil-speaking Muslim persons with the backing of government politicians has been engaged in a campaign of threat against Tamil families of Upcountry origin residing in U'rukaamam in Kiththu'l area in the Ea'raavoor Chengkaladi DS division to leave their place and seek residence elsewhere. U'rukaamam-Kiththu'l area is located along Chengkaladi-Badulla highway (A-15). The villagers are of upcountry Tamil origin who fled from their area in the SL state-sponsored anti Tamil pogrom of 1957 and had settled in U'rukaamam-Kiththu'l area after clearing the forest. The villagers were also affected in 1983 anti Tamil 'Black-July' pogrom. [...]

Torture/ill-treatment

In addition to including various NGOs' submissions to the United Nations Committee Against Torture, and the Committee's concluding observations, this section now explicitly includes information on the practice of torture being committed against returned Tamil asylum seekers:

Excerpt from the April 2012 OGN

3.6.17 Human Rights Watch in February 2012 said research had found that some returned Tamil asylum seekers from the UK had been subjected to arbitrary arrest and torture on return to Sri Lanka. 8 (anon) cases were documented in which people deported had faced serious abuses and HRW stated they had obtained medical evidence to support each of the claims of torture. HRW called upon the UK to cease returns and on the Sri Lankan government to stop targeting Tamil returnees, to end the use of torture and other ill treatment in custody.

However, as discussed below, it is considered that the COI included in this section is not adequately reflected in the [Conclusion](#) for this main category of claim.

Paramilitary groups/rival political factions

Excerpt from the April 2012 OGN

3.6.27 Reports of Abductions for extortion and ransom increased during the year [2010], particularly in the North and East. Local residents blamed such abductions in the Jaffna Peninsula on armed members of the EPDP, led by Government ally and MP Douglas Devananda. In other areas of the North and East however it was difficult to identify the perpetrators. The overall number of extrajudicial killings dropped significantly from the previous year. Nevertheless during the year [2010] unknown actors suspected of association with pro-government paramilitary groups committed killings and assaults of civilians. These included the Tamil Makkal Viduthalai Pulikal (TMVP), led by breakaway LTTE eastern commanders Vinayagamurthi Muralitharan, alias Karuna,, and Sivanesathurai Chandrakanthan, alias Pillaiyan,, in the east, as well as the Eelam People's Democratic Party (EPDP), led by the former Minister of Social Services and Social Welfare Douglas Devananda in Jaffna. These and other pro-government paramilitaries also were active in Mannar and Vavuniya. All of these groups endeavoured to operate political organizations, some with more success than others, and there were persistent reports of close, ground-level ties between paramilitaries and government security forces. Whereas these groups served more of a military function during the war, often working in coordination with security forces, the paramilitaries now took on increasingly criminal characteristics as they sought to solidify their territory and revenue sources in the post-war environment.

Whilst this section of the OGN has now been expanded to include COI on the political targets and motivations of paramilitary groups, it is considered that the following additional COI from 2012

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contradicts the above highlighted sentence of the OGN which implies that abductions tend to be financially motivated:

- [TamilNet, Tamil student abducted, killed near SL military zone in Jaffna, 18/04/2012](#)
[...] 18-year-old Sivalingam Sivakumaran, a student from Kerudaavil village in Vadamaradchi North of Jaffna district, was found slain inside a bush, 2 km away from his house on Wednesday. The Tamil student was abducted five days ago, on 13 April after 6:00 p.m., when he had left his house towards the historic Chelvach-channithi temple, according to the family of the victim. The Kerudaavil village is situated along the eastern border of the Valikaamam 'High Security Zone' of the occupying SL military. The student has been tortured and killed, the villagers who witnessed the recovery of the dead body told media. [...] Many abductions go unreported as families of the victims refrain from complaining, the sources further said adding that the SL military officials and paramilitary operatives often 'advise' the families to keep a low profile in reporting the incidents. The families of the victims are told that such reporting would only reduce the chance of 'possible future release' of those being abducted. [...]
- [TamilNet, Abducted youth recovered in Trincomalee: SL Police, 01/04/2012](#)
[...] Sri Lankan Police spokesman Ajith Rohana on Saturday said that the 22-year-old Tamil youth, Ananda Kishore Thanikasalam, abducted in Vaakarai on 28 March, was recovered at Dehiwatte in Serunuwara of Trincomalee district. The youth had been abducted from his house as his parents refused to hand over their 8 acres of palm grove to a Sinhala person from the South. As the abduction was highlighted in the media, the SL police was attempting to project the abduction as a ransom case, informed sources said. [...]
- [International Crisis Group, Sri Lanka's North I: The Denial of Minority Rights, 16/03/2012](#)
[...] C. CURRENT ROLE OF TAMIL PARAMILITARIES
[...] EPDP's current function seems to be to weaken the TNA and prevent the emergence of any serious political resistance to government rule. Even as Devananda and EPDP candidates were seen ostentatiously distributing government patronage in the run-up to the July 2011 local government elections, EPDP thugs were also accused of involvement in a series of physical attacks on TNA candidates during the campaign.⁹² As it was during the years of war and counter-insurgency, the party is also still regularly accused of physical attacks on other critical voices in Jaffna, including murders and disappearances; its members are widely believed to work in close coordination with the Sri Lankan military.⁹³ The EPDP is also reportedly involved in a range of for-profit criminal activities, including illegal sand-mining.⁹⁴ Its officials deny all such charges.⁹⁵ [...]
- [BBC, Sri Lanka's sinister white van abductions, 13/03/2012](#)
[...] Human rights campaigners say there were 32 unexplained abductions between last October and this February, mostly in Colombo or northern Sri Lanka, the victims a mix of Sinhala, Tamil and Muslim. Lalith at a demonstration Lalith Weeraraj campaigned against disappearances, before he too vanished. In addition, 10 mostly unidentified bodies were found in February alone. It's not clear how many of these, if any, are linked to the disappearances - but their discovery has added to a heightened sense of unease here.
Of the kidnappings that were witnessed, most were said to have taken place in white vans - which for years have been the vehicle of shadowy gangs behind enforced disappearances.
One victim was seized right outside the Colombo law courts - snatched from prison guards bringing him for a bail application. Five of the 32 escaped but seven bodies have been found, including a woman in her 60s. The other 20 have simply vanished.
The witnessed disappearances include the case of two young activists, Lalith Weeraraj - half Sinhala and half Tamil - and a Tamil, Kugan Muruganathan. They spent 2011 organising a number of demonstrations, bringing to Colombo people from the former war zone whose family members disappeared as the war ended - mostly, they claim, at the hands of the security forces.
In a sinister development in December, Lalith and Kugan themselves vanished in northern Sri Lanka, seemingly abducted as they prepared another demonstration.
Death squads?

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All sorts of people are disappearing, but many of them appear to have been at loggerheads with the authorities. [...]

- [TamilNet, Five ex-LTTE members abducted since February 27, 06/03/2012](#)
[...] Five former members of the Liberation Tigers of Tamil Eelam (LTTE), who were released last year by the occupying SL forces for integration with their families after the genocidal SL military's 'rehabilitation' programme, have been reported missing last week. [...]
- [TamilNet, Pro Rajapaksa gang abducts, threatens Kaaththaankudi civil activist, 02/02/2012](#)
[...] A.C.M. Asam, a member of the Kaaththaankudi Good Governance People Movement was abducted last Friday by an armed men who came in motorbikes when he was returning home after seeing his ailing mother in the Batticaloa Teaching Hospital. Mr. Asam was later released after four hours, according to M.M.Abdur Rahuman, Soora council member of the movement at a media briefing held this week. Mr. Asam had exposed the fraud to the tune of 150,000 rupees that took place in the Kaaththaankudy UC. Asam had been threatened by the abductors not to work against Kaaththaankudi Urban Council chairman M.L.A.M.Hisbullah, who is a Deputy Minister in SL President Mahinda Rajapaksa's regime. [...]

Treatment of failed Asylum seekers

The OGN now includes COI which documents that returned Tamil asylum seekers from the UK have been subjected to arbitrary arrest and torture, and that persons perceived to support the LTTE are at significant risk as follows:

Excerpt from the April 2012 Sri Lanka OGN

3.6 Fear of persecution by the Sri Lankan authorities

Treatment of failed Asylum seekers (see also section 5: Returns)

[...] 3.6.33 Freedom from Torture (FFT) released a report "Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka " on 7 November 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]."

3.6.34 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 subsequently detained and tortured. In five of these cases, the episode of detention and torture documented in the MLR occurred over a year and up to seven years after return. However, in nine cases the individual was detained within days, weeks or a month of their return. Of these nine cases, six were detained in Colombo, either from their home, at checkpoints or from a lodging house. Others were detained at checkpoints elsewhere in the country or directly from the airport upon arrival."

3.6.35 Human Rights Watch on 16 June 2011 publicly expressed concern about Britain returning rejected asylum seekers to Sri Lanka because it believes that "Sri Lankan nationals who have been affiliated with or are considered to be supporters of the LTTE, would be at significant risk of persecution if deported back to Sri Lanka". The organization noted that its research "shows that Sri Lankan authorities have frequently violated the basic rights of people suspected of being affiliated with or supporters of the LTTE". In February 2012, Human Rights Watch stated that its research found that "some returned Tamil asylum seekers from the United Kingdom have been subjected to arbitrary arrest and torture upon their return to Sri Lanka" and documented specifically "eight recent cases in

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which people deported to Sri Lanka have faced serious abuses” obtaining “medical evidence supporting each of the [eight] claims of torture”.

3.6.36 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”. 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”.

There is also evidence which is not included in the OGN that demonstrates the continued surveillance of returnees from abroad after they have passed through the airport, that returnees are at risk of re-arrest and detention and ‘combing operations’ have been performed by special units of Colombo’s military police which have resulted in the detention of up to 300 Tamils and which reportedly had access to lists of recently deportees from overseas:

➤ [Tamil Net, SLA suspected in slaying Jaffna youth while ex AG defends crimes as normal, 27/04/2012](#)

[...] Sri Lankan military intelligence resorts to liquidate Tamil youths it suspect by using different means in recent times, human rights activists in Jaffna said, citing a brutal killing that took place on Tuesday this week at Vathiri Junction of Nellyyadi in Vadamaradchi. The killer squad followed 28-year-old Sivarooban Sivagnanam, who had returned from Qatar six months ago when he was on his way to Manthikai hospital from his house in Koththiya-kaadu in Tho'ndaimaanaaru, taking food to his hospitalised father. The squad that followed Sivaraoopan in motorbike, knifed him to death in broad daylight near a Sri Lanka Army camp located near the Vathiri junction, residents said.

The pattern of the killer squads nowadays is to use swords and knives so that it will look as acts of ‘normal crimes’. The squads avoid deploying guns. [...]

The incident on Tuesday also shows the monitoring carried out by SL military intelligence on people coming back from abroad. [...]

➤ [TamilNet, UK deportee killed while Tamil Nadu returnees arrested in Trincomalee, 28/03/2012](#)

[...] In the meantime, in a systematic combing operation launched by the special units of Colombo's military and police establishments, up to 300 Tamil males and females have been ‘arrested’ and sent to military detention camps in Welikanda and Vavuniyaa since last Saturday. Among the victims are also people who have recently returned from Tamil Nadu and they too have now ended up in Welikanda and Vavuniyaa, the sources in Trincomalee further said.

[...] Meanwhile, last week, the military and police units that had come from Colombo to launch the combing operations in the district were having lists of recently deported people from abroad, the details of returnees from Tamil Nadu and details of ex- LTTE members who were released by them earlier, the sources further said.

Although the official explanation for the combing operations by the SL military was that it was targeting former LTTE members who had not undergone SL government ‘rehabilitation’ programme, the arrests that have taken place during the nights in the past week have also targeted those who were not members of the LTTE, civil sources further said.

[...] Despite the earlier reports that around 200 Tamil men and women were sent to detention, the civil sources in Trincomalee city now say that reports reaching from several remote villages indicate that around 300 Tamils have been taken.

At Kumpu'rup-piddi alone, more than 40 Tamils have been arrested and sent to detention by the genocidal Sri Lankan military. [...]

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

[...] According to the Law and Society Trust-led joint submission, some of the challenges faced by returnees, other than at the airport during re-entry, include difficulties finding accommodation, employment, family, and documentation (Law and Society Trust et al. 18 July 2011, 6). The report notes that if the returnees do not obtain a National Identity Card (NIC), "they could face re-arrest, detention and torture" (ibid.). There are also no programs or policies in place to help returnees reintegrate into society, leaving them "vulnerable to abduction and extortion by armed groups" (ibid.). Returnees are also viewed with "suspicion," and are generally seen as "'traitors,' 'those who brought the country to disrepute' [and] '... lied about the situation in the country abroad'" (ibid., 6-7). They also face "systematic media attacks" that characterize "the Tamil diaspora community as being LTTE mouthpieces and supporters" (ibid., 7). [...] The Law and Society Trust-led joint submission also notes that even if a deported/returned person is 'cleared' and allowed to leave the airport, they are in danger of being detained at check-points for any number of reasons, and also subject to intimidation and extortion. They also face a threat from paramilitary groups who may abduct and torture them for information or for purposes of extortion. (ibid., 6) [...]

See the analysis below in [section 5 Returns](#) for information on entry procedures for refused asylum seekers which suggests that returned Tamils are particularly at risk of interrogation and detention, especially if they arrive individually.

Torture/ ill-treatment and Conclusion

Excerpt from the April 2012 OGN

Torture/ ill-treatment [...]

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

[...] 3.6.39 *Conclusion*. The ECtHR in E.G. found that the risk categories identified in LP and endorsed by the ECtHR in NA continued to apply, but noted that because the conflict has ended that the interest in returning Tamils on the part of the Sri Lankan authorities has, if anything, declined. The Court in EG found that it is present conditions which are decisive and an assessment must be made of the circumstances at the time of the proceedings. TK found that the military defeat of the LTTE in 2009 has not aggravated the likely approach of the Sri Lankan authorities to returned failed asylum seekers who are Tamils; if anything, the level of interest in them has decreased. The principal focus of the authorities continues to be, not Tamils from the north (or east) as such, but persons considered to be either LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms.

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

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

3.6.42 As noted above (3.6.10), several thousand people were detained or “surrendered” when the conflict came to an end, including some with minimal involvement in the LTTE. Reports vary as to actual numbers, but the majority with low level involvement have since been released in tranches which suggests that in general they are not of continuing interest to the authorities. The key question, in light of improvements in the overall security situation, is whether any past involvement in the LTTE is currently likely to bring returnees to the adverse attention of the Sri Lankan authorities.

3.6.43 Case owners should follow EG and consider the present conditions in Sri Lanka. A key question in light of improvements in the overall security situation is 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.

It is considered that the *Conclusion* for this main category of claim is not fully consistent with the COI contained in the *Treatment* section of the OGN, nor with COI which is currently available in the public domain. The *Conclusion*, particularly at paragraph 3.6.39 relies on the findings of EG which was promulgated in May 2011 and which reconfirms TK, the Country Guidance case of December 2009. In particular, the *Conclusion* fails to take account of the COI which post-dates this Country Guidance case which documents that it is Tamils perceived to support the LTTE whom continue to be at risk of torture in Sri Lanka, as is reported by Freedom From Torture cited above in the *Treatment* section of the OGN at paragraph 3.6.13, and not only persons with past involvement with the LTTE, as is concluded at paragraph 3.6.42 above. Both the *Treatment* section and the *Conclusion* of the OGN also fail to take account of the on-going disproportionate impact of the ‘Emergency Regulations’ on persons of Tamil ethnicity, especially those perceived to support the LTTE, the on-going harassment and beatings of Tamils committed by the security forces, and attempts to forcibly relocate Tamil communities as is detailed above in the analysis of the [Tamil ethnicity](#) sub-section.

Furthermore paragraph 3.6.42 highlighted above also suggests that those persons perceived to support the LTTE and who were detained or ‘surrendered’ when the conflict ended and have since been released, are no longer of interest to the authorities. It is considered that this is inconsistent with COI included in the following sections of the OGN:

Excerpt from the April 2012 OGN

Tamil ethnicity

[...] 3.6.6 In February 2012, Amnesty International reported ongoing unlawful detention practices in Sri Lanka whereby the Sri Lankan authorities “continue to arrest and detain suspects without minimal safeguards” often contributing to torture and custodial killings in a culture of impunity.²⁴ The report documents numerous instances where such violations have taken place against Tamils, especially those perceived to support the LTTE.²⁵ Similarly, Human Rights Watch noted in 2012 that Tamils who have been released after being sent to so-called rehabilitation centres report harassment by security forces after they returned home.²⁶ [...]

Treatment of ex-combatants

[...] 3.6.11 Amnesty International’s February 2012 report noted the on-going harassment, re-arrest and physical attacks against former detainees, as well as the “killings and enforced disappearances of newly released detainees”. It further stated that “Police often use threats against detainees, former detainees and families to extract confessions or intelligence, to extort money from them or force detainees to implicate or denounce others”. [...]

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Paragraph 3.6.42 is also inconsistent with the additional COI presented above in the analysis of the [Tamil ethnicity](#) sub-section which further details that persons released from 'rehabilitation centres' continue to be kept under surveillance, subject to harassment and re-arrest.

The *Conclusion* also fails to take account of the evidence as presented in the OGN in the subsection [Treatment of failed Asylum seekers](#) and in [section 5 Returns](#) that returned Tamil asylum seekers from the United Kingdom have been subjected to arbitrary arrest and torture. There is also evidence which is not included in the OGN that Tamil returnees from abroad have been monitored after they have passed through the airport, and been rounded up and detained. This is particularly relevant given that the OGN concludes with respect to detention conditions that they are likely to breach the Article 3 threshold and that those perceived to support the LTTE may be at heightened risk of ill-treatment and torture:

Excerpt from the April 2012 Sri Lanka OGN

3.9 Prison conditions

[...] 3.9.11 Conclusion Conditions in prisons and police custody are very poor and taking into account the levels of overcrowding, unsanitary conditions, lack of food and the incidence of torture, are likely to reach the Article 3 threshold and a grant of Humanitarian Protection may be appropriate - see exclusion below.

3.9.12 Those perceived to be connected to the LTTE, both men and women, and held in rehabilitation camps, prisons or detention centres may be at heightened risk of ill-treatment and torture. Case owners will need to consider whether a grant of asylum based upon imputed political opinion is appropriate – see exclusion below.

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2.4 Internal Relocation

The OGN does not make an assessment as to whether internal relocation would be relevant or reasonable for particular profiles, but rather emphasises the importance of an individual's personal circumstances and the latest COI:

Excerpt from the April 2012 Sri Lanka OGN

2.4.9 When assessing the reasonableness of internal relocation, careful consideration must be given to the personal circumstances of the individual applicant, the conditions in the area of proposed relocation and how it will be accessed, taking account of the latest information about the security and the humanitarian situation. A Country of Origin Information request should be submitted to the Country of Origin Information Service if more information is needed.

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

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

[...] B. Internal Flight or Relocation Alternative

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

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

The following table provides a list of useful sources to consult on the situation for internally displaced persons in Sri Lanka:

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

Source	Type of source	Website's search function
AlertNet Sri Lanka pages	Humanitarian news site from Thomson Reuters providing information on natural disasters, conflicts, refugees, hunger, diseases and climate change. Country pages include sections on: <ul style="list-style-type: none"> ○ Breaking news ○ Aid agency news feed ○ In detail ○ Timeline ○ Links ○ News 	<ul style="list-style-type: none"> ● Country page ● Advanced search function which allows for: <ul style="list-style-type: none"> ○ Keyword search ○ Searches limited by source; content partner; aid agency; country; topic; sub-topic; crisis and by time frame ○ Search results can be organised by date ○ Searches within time frames (From: To) ○ BOOLEAN searches (AND, OR, NOT, ALL)
The ICRC Sri Lanka country page	The International Committee of the Red Cross Sri Lanka country page includes sections on: <ul style="list-style-type: none"> ○ Latest News ○ Highlights ○ Annual report 	<ul style="list-style-type: none"> ● Country page ● Advanced search function which allows for: <ul style="list-style-type: none"> ○ Keyword searches (Exact Wording; All the Words; Any Words)
Internal Displacement Monitoring Centre (IDMC) Sri Lanka country page	The IDMC is an international body which monitors conflict-induced internal displacement worldwide. Its country pages include: <ul style="list-style-type: none"> ○ Country statistics ○ Maps ○ Internal Displacement Profile ○ IDP News alert ○ Key documents; news and reports from other organisations on the situation and treatment of IDPs and returnees. ○ The Sri Lanka Country Profile was last updated in January 2011 	<ul style="list-style-type: none"> ● Country and thematic pages ● Advanced search function which allows for: <ul style="list-style-type: none"> ○ BOOLEAN searches (AND, OR, NOT) ○ Searches for phrases (“...”) ○ It is not possible to search within particular time frames
International Crisis Group, Sri Lanka pages	The International Crisis Group is an independent, non-profit, non-governmental organisation committed to preventing and resolving deadly conflict. It provides information on Sri Lanka through: <ul style="list-style-type: none"> ○ Crisis Watch- a 12-page monthly bulletin designed to provide a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world. ○ Recent reports include: <ul style="list-style-type: none"> - Sri Lanka's North I: The Denial of Minority Rights, 16th March 2012 - Sri Lanka's North II: Rebuilding under the Military, 16th March 2012 - Women's insecurity in the North and the East, 20th December 2011 	<ul style="list-style-type: none"> ● Simple search function which allows for keyword searches only

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	- Reconciliation in Sri Lanka: Harder than Ever, July 2011	
IRIN News Sri Lanka Country page	A service of the UN Office for the Coordination of Humanitarian Affairs. It provides: <ul style="list-style-type: none"> ➤ Humanitarian news and analysis by country and theme. 	<ul style="list-style-type: none"> • Country and thematic pages • Advanced search function which allows for <ul style="list-style-type: none"> ○ Keyword searches (Exact Wording; All the Words; Any Words) ○ Limits searches by Services; Country; Theme; Report Type ○ Searches within time frames (From: To)
Relief Web Sri Lanka country page	Relief Web is a database of reports from international and non-governmental organizations, governments, research institutions and the media for news, reports, press releases, appeals, policy documents, analysis and maps related to humanitarian emergencies worldwide. It provides: <ul style="list-style-type: none"> ○ In-depth profiles, updates and reports on countries and disasters ○ Maps ○ Database of who's reporting 	<ul style="list-style-type: none"> • Country and thematic pages • Advanced search function which allows for: <ul style="list-style-type: none"> ○ BOOLEAN searches (AND, OR, NOT) ○ Searches for phrases (“...”) ➤ Limits searches by: Country; source; theme; content format; feature; disaster type; vulnerable groups; published date (by month); language
TamilNet	TamilNet is an independent and not-for-profit newswire service that provides up to date news with Tamil perspective on issues concerning Tamil people in the island of Sri Lanka. TamilNet features News Updates, News Features, Interviews and Photo Features.	<ul style="list-style-type: none"> • News items are stored in reverse chronological order. ○ Simple search function which allows for keyword and BOOLEAN searches (AND, OR, NOT, ALL) and ○ Searches for phrases (“...”)
UNHCR Sri Lanka country page	UNHCR country pages provide: <ul style="list-style-type: none"> ○ Country Operations Profile ○ Statistical snapshot ○ Latest news ○ UNHCR fundraising reports ○ Background, analysis and policy ○ Statistics ○ Maps ○ UNHCR Partner Directory 	<ul style="list-style-type: none"> • Country page does not have a search function • UNHCR home page has an advanced search function which allows for : <ul style="list-style-type: none"> ○ BOOLEAN searches (AND, OR, NOT, ALL) ○ Keyword by title ○ Limits searches by category, country of origin, country of asylum ○ Searches within time frames

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5. Returns

This section should be read in conjunction with the analysis and COI provided further above under the sub-section [Treatment of failed Asylum seekers](#) and the [Conclusion](#) of section '3.6 Fear of persecution by the Sri Lankan authorities'.

Excerpt from the April 2012 Sri Lanka OGN

5.4 Freedom From Torture (FFT) in a statement 25 February 2012 called upon the UK government to stop all forcible removals of Tamils to Sri Lanka. This followed a Human Rights Watch (HRW) report that a number of individuals who were recently removed by the UK were detained and tortured on return. HRW had called upon the UK to suspend deportations of ethnic Tamil asylum seekers to Sri Lanka. The UK Border Agency has considered the reports by Freedom from Torture and Human Rights Watch and following current caselaw maintains that at present it is safe in general to return failed asylum seekers, including Tamils, to Sri Lanka.

The OGN concludes at paragraph 5.4 that despite recent reports by Freedom from Torture and Human Rights Watch UKBA "maintains that at present it is safe in general to return failed asylum seekers, including Tamils, to Sri Lanka". This is rather striking given the compelling evidence presented by Freedom from Torture, Human Rights Watch, and Amnesty International) that returned asylum seekers from the UK have been subjected to arbitrary arrest and torture, including Tamils and which has been included in the OGN in the sub-section 'Treatment of failed asylum seekers' as part of section '3.6 Fear of persecution by the Sri Lankan authorities' (see below). It is unclear on what basis the UKBA has rejected the findings of these reputable sources.

Excerpt from the April 2012 Sri Lanka OGN

3.6 Fear of persecution by the Sri Lankan authorities

Treatment of failed Asylum seekers (see also section 5: Returns)

[...] 3.6.33 Freedom from Torture (FFT) released a report "Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka " on 7 November 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]."

3.6.34 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 subsequently detained and tortured. In five of these cases, the episode of detention and torture documented in the MLR occurred over a year and up to seven years after return. However, in nine cases the individual was detained within days, weeks or a month of their return. Of these nine cases, six were detained in Colombo, either from their home, at checkpoints or from a lodging house. Others were detained at checkpoints elsewhere in the country or directly from the airport upon arrival."

3.6.35 Human Rights Watch on 16 June 2011 publicly expressed concern about Britain returning rejected asylum seekers to Sri Lanka because it believes that "Sri Lankan nationals who have been affiliated with or are considered to be supporters of the LTTE, would be at significant risk of persecution if deported back to Sri Lanka". The organization noted that its research "shows that Sri Lankan authorities have frequently violated the basic rights of people suspected of being affiliated with or supporters of the LTTE". In February 2012, Human Rights Watch stated that its research found that "some returned Tamil asylum seekers from the United Kingdom have been subjected to arbitrary

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arrest and torture upon their return to Sri Lanka” and documented specifically “eight recent cases in which people deported to Sri Lanka have faced serious abuses” obtaining “medical evidence supporting each of the [eight] claims of torture”.

3.6.36 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”. 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”.

In April 2012 Human Rights Watch restated its position on returnees:

- [Human Rights Watch, Sri Lanka: Australia Should Raise Torture Concerns, 30/04/2012](#)
[...] Australia’s immigration minister should raise concerns with Sri Lankan officials about alleged arbitrary arrest and torture of people who were refused asylum and sent back to Sri Lanka when he visits this week, the Human Rights Law Centre and Human Rights Watch said today.
[...] “Rejected asylum seekers returned to Sri Lanka have been subject to arbitrary detention, torture, and other serious human rights abuses,” said Phil Lynch, executive director of the Human Rights Law Centre. “ [...] Human Rights Watch has documented at least eight cases in which people who had unsuccessfully sought asylum in the UK were returned to Sri Lanka and endured serious human rights abuses, including torture and rape. Some said they were beaten with batons and burned with cigarettes.
The Edmund Rice Center in Australia similarly documented in May 2010 that asylum seekers returned to Sri Lanka were handed over to the Criminal Investigation Department, the Sri Lankan police, and taken into custody. Some have been detained and assaulted. [...]

Additional research conducted by the Research Directorate of the Immigration and Refugee Board of Canada in August 2011 based on correspondence with the Law and Society Trust-led joint submission and a telephone interview with an adjunct professor of political science at Temple University, reported that Tamil returnees are particularly vulnerable if they arrive individually and that Tamils with or without any connection to the Tamil cause will be screened at the airport:

- [Immigration and Refugee Board of Canada, Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport, 22/08/2011](#)
[...] In contrast to the Canadian High Commission official's statement is a joint submission prepared specifically for the Research Directorate by the following parties: Law and Society Trust, a non-profit organization based in Colombo that is "conducting human rights documentation, research and advocacy" work (Law and Society Trust n.d.); INFORM Human Rights Documentation Centre, a "Sri Lankan human rights organization" that has been active since 1989 and that focuses on "monitoring, documentation and networking" (WEDO n.d.); Networking for Rights in Sri Lanka, a group creating a national and international network of Sri Lankan human rights defenders (NFR Sri Lankan.d.); and a human rights lawyer in the United Kingdom (UK) (Law and Society Trust et al. 18 July 2011, 7).
With regard to security procedures at the Colombo airport for failed Tamil refugee claimants, their joint submission states that [i]mmigration authorities are alerted about the impending arrival of those who are deported or who are ‘returned’ as a result of failed asylum processes. They are also identifiable by the fact that they travel on temporary travel documents. These individuals are taken out of immigration queues

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and subjected to special questioning by the Police, and by members of the Terrorist Investigation Department [TID]. They are almost always detained, sometimes for few hours, and sometimes for months, until security clearance is obtained. In situations in which most families of the deported/returned persons have been displaced due to the war, are not contactable by telephone, and in which Police records that could attest to their legitimate address and non-involvement in criminal or terrorist activity have often been misplaced due to the constant cycles of displacement undergone by the entire community of the North and East in the past years, obtaining the required security clearance may take months. If there is no family member to follow up, this may lead to indefinite detention. (Law and Society Trust et al. 18 July 2011, 5) Their joint submission further notes that Tamil returnees are "particularly vulnerable if they arrive individually, and if no one knows they are arriving" (ibid., 6).

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

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

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

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

According to the joint submission, detention conditions are "very brutal" (ibid.). [...]

With regards to entry procedures for refused asylum seekers, the OGN states in the sub-section 'Treatment of failed Asylum seekers' of section '3.6 Fear of persecution by the Sri Lankan authorities' and in section '5. Returns' that:

Excerpt from the April 2012 Sri Lanka OGN

Treatment of failed Asylum seekers (see also section 5: Returns)

3.6.29 The FCO report "Information gathering visit to Colombo, Sri Lanka 23-29 August 2009" commented on the procedures followed by the Department of Immigration and Emigration (DIE) officials, who operate border control at the airport [Bandaranaike International Airport (BIA), located in Katunayake in the Gampaha district] and the circumstances in which the State Intelligence Service (SIS), Criminal Investigations Department (CID) and Terrorist Investigation Department (TID) would become involved.

3.6.30 The report informed that anyone who was wanted for an offence would be arrested. Those with a criminal record or LTTE connections would face additional questioning and may be detained.

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

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3.6.32 A letter from the BHC, Colombo, dated 5 January 2012 reported on the entry procedures for UK returnees at Colombo Bandaranaike Airport, including the roles of DIE, SIS and CID. In the same letter the BHC stated: In general, the situation regarding all returnees regardless of race or creed appears to be more relaxed now. There is still inconsistency in the way individuals are dealt with and the British High Commission are aware that some returnees are not even identified by the authorities, or they are but they are allowed to proceed without undergoing the SIS/CID interviewing process. The border authorities have amended their procedures for the UKBA charter flights of returnees in order to speed up the process”.

5.5 The BHC, Colombo, in a letter dated 5 January 2012, reported on the entry procedures for the UK returnees at the Colombo Bandaranaike Airport, including the roles of the Department of Immigration and Emigration (DIE) officials, who operate border control at the airport [Bandaranaike International Airport (BIA), located in Katunayake in the Gampaha district]; and the circumstances in which the State Intelligence Service (SIS), and Criminal Investigations Department (CID) would become involved.

- UK returnees generally arrive in Colombo on Sri Lankan Airlines scheduled flights, which provide the only direct flights between the UK and Sri Lanka from London Heathrow Terminal 4. Returnees also arrive from the UK however on Qatar Airlines via Doha, Gulf Air via Bahrain and Jet Airways via Delhi or Mumbai.

- DIE procedures are the same for all deported and returned Sri Lankan nationals and they will interview them merely to confirm their Sri Lankan nationality. They record the details of all returnees in a register (logbook) which is held in the duty Chief Immigration Officer’s office. Once satisfied that a returnee is a Sri Lankan national in many cases they refer them to the State Intelligence Service (SIS) and the Criminal Investigations Department (CID).

- Emergency passports are considered full official documents issued by the Sri Lankan authorities. They are a proof of identity and are valid to go through any checkpoints.

5.6 As regards returns on charter flights: A BHC Colombo letter of 1 March 2012 stated “A flight chartered by the UK Border Agency specifically for the return of Sri Lankan nationals who did not qualify for leave to enter or remain in the United Kingdom, left London on 28 February 2012 bound for Colombo and arrived on 29 February 2012 with 52 enforced returnees, many of whom were failed asylum seekers. The ethnic split of the returnees was 29 Tamil, 13 Sinhala and 10 Muslim, and there were 45 males and 7 females. Prior negotiations had taken place in both London and Colombo between the UK and Sri Lankan governments under the 2004 bilateral readmission agreement in order to facilitate the smooth arrival and processing of the returnees on arrival in Sri Lanka. From the British High Commission the Deputy High Commissioner, the Returns Liaison Assistant and I were waiting in the immigration arrivals hall along with officials from the Police Criminal Investigations Department (CID), SIS and airport security. DIE had brought in a team of Tamil speaking officers, and CID and SIS had also drafted in extra staff specifically to assist their airport based colleagues in processing the charter flight returnees. I addressed them in English. I explained who I was and what procedures they were about to go through, and offered them words of reassurance about the process and the amount of time it would take. I explained that we would assist them in contacting waiting relatives or friends. On completion of the SIS/CID interviews, the returnees returned to the main seating area. As soon as passports/travel documents were reunited with the returnees they were allowed to proceed. The first returnee was allowed to proceed at 1445hrs. Representatives from the International Organization for Migration (IOM) spoke individually to each returnee to hand over a travel grant in Sri Lankan Rupees equivalent to £50, to enable the returnee to have the means to travel to their onward address anywhere in Sri Lanka, and for overnight accommodation where required. Each returnee provided contact details to IOM. All of the returnees were given either my business card or that of my colleague at the British High Commission, and were advised to contact us if they had any questions or concerns. My colleague and I both watched each returnee go through the Customs control to ensure they were not stopped or harassed in any way. The last of the returnees passed through Customs and into the arrivals area at around 1830hrs.

All of these paragraphs describe the entry procedures for UK returnees and refused asylum seekers at Colombo Bandaranaike Airport citing letters written in January and March 2012 by the British High Commission Colombo, an August 2011 Canadian High Commission correspondence with the

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Research Directorate of the Immigration and Refugee Board of Canada, and a 2009 FCO report. The information extracted from the recent British High Commission Colombo letters and the Canadian High Commission correspondence do not point to any unusual procedures or worrying trends. However, the 2009 FCO report at paragraph 3.6.30 reports that those returned who have LTTE connections "would face additional questioning and may be detained", which is corroborated by more recent COI included in the following report by the Research Directorate of the Immigration and Refugee Board of Canada in August 2011 based on a Law and Society Trust-led joint submission and a news article that appeared in the daily *Sri Lanka Guardian* in January 2011:

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

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

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

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

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

According to the joint submission, detention conditions are "very brutal" (ibid.). [...]

Also note that no further information is included as to the current situation of returnees, especially refused asylum seekers, and whether they are subject to ongoing surveillance or ill-treatment once they have left the airport. Recent sources included below have reported on the killing of a Tamil youth six months after he had returned from Qatar and on a recent operation launched by the special units of Colombo's military and police who reportedly had lists of recently deported people

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from abroad, in which up to 300 Tamil males and females had been arrested and sent to military detention camps:

➤ [Tamil Net, SLA suspected in slaying Jaffna youth while ex AG defends crimes as normal, 27/04/2012](#)

[...] Sri Lankan military intelligence resorts to liquidate Tamil youths it suspect by using different means in recent times, human rights activists in Jaffna said, citing a brutal killing that took place on Tuesday this week at Vathiri Junction of Nellyyadi in Vadamaradchi. The killer squad followed 28-year-old Sivarooban Sivagnanam, who had returned from Qatar six months ago when he was on his way to Manthikai hospital from his house in Koththiya-kaadu in Tho'ndaimaanaa'ru, taking food to his hospitalised father. The squad that followed Sivaraopan in motorbike, knifed him to death in broad daylight near a Sri Lanka Army camp located near the Vathiri junction, residents said.

The pattern of the killer squads nowadays is to use swords and knives so that it will look as acts of 'normal crimes'. The squads avoid deploying guns. [...]

The incident on Tuesday also shows the monitoring carried out by SL military intelligence on people coming back from abroad. [...]

➤ [TamilNet, UK deportee killed while Tamil Nadu returnees arrested in Trincomalee, 28/03/2012](#)

[...] In the meantime, in a systematic combing operation launched by the special units of Colombo's military and police establishments, up to 300 Tamil males and females have been 'arrested' and sent to military detention camps in Welikanda and Vavuniyaa since last Saturday. Among the victims are also people who have recently returned from Tamil Nadu and they too have now ended up in Welikanda and Vavuniyaa, the sources in Trincomalee further said.

[...] Meanwhile, last week, the military and police units that had come from Colombo to launch the combing operations in the district were having lists of recently deported people from abroad, the details of returnees from Tamil Nadu and details of ex- LTTE members who were released by them earlier, the sources further said.

Although the official explanation for the combing operations by the SL military was that it was targeting former LTTE members who had not undergone SL government 'rehabilitation' programme, the arrests that have taken place during the nights in the past week have also targeted those who were not members of the LTTE, civil sources further said.

[...] Despite the earlier reports that around 200 Tamil men and women were sent to detention, the civil sources in Trincomalee city now say that reports reaching from several remote villages indicate that around 300 Tamils have been taken.

At Kumpu'rup-piddi alone, more than 40 Tamils have been arrested and sent to detention by the genocidal Sri Lankan military. [...]

This is especially relevant given that the OGN concludes that detention conditions are likely to breach the Article 3 threshold and that those perceived to support the LTTE may be at heightened risk of ill-treatment and torture:

Excerpt from the April 2012 Sri Lanka OGN

3.9 Prison conditions

[...] 3.9.11 Conclusion Conditions in prisons and police custody are very poor and taking into account the levels of overcrowding, unsanitary conditions, lack of food and the incidence of torture, are likely to reach the Article 3 threshold and a grant of Humanitarian Protection may be appropriate - see exclusion below.

3.9.12 Those perceived to be connected to the LTTE, both men and women, and held in rehabilitation camps, prisons or detention centres may be at heightened risk of ill-treatment and torture. Case owners will need to consider whether a grant of asylum based upon imputed political opinion is appropriate – see exclusion below.

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

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

- [RIEK STIENSTRA FUND/KARTINI ASIA NETWORK/HIVOS/MAMA CASH/THE FORD FOUNDATION, Women-Loving-Women in Africa and Asia, 24/11/2011](#)

[...] Chapter 12

Stories to tell: A queer women's oral history in Sri Lanka

[...]1.2. Legal context

Two existing laws of British origin have been the primary focus of lobbying for policy changes by queer groups. The principal problem is the criminalization of same-sex sexual activity under Section 365(a) of the Penal Code in the country. The wording of the Section is similar to that of other Commonwealth countries that have this law, and state that it is sexual relations between two persons "against the order of nature" is prohibited. The change of 'man' (as stated in the original version of the Penal Code) to 'person' in the Sri Lankan Penal Code was an accidental consequence of the attempt to decriminalize this Section in 1999. As clarified by Savithri Goonesekera at a public event in 2008, when the Parliament decided in 1995 to not decriminalize S 356 (a), it had to make sure that this particular legal section was in accordance with other Constitutional Provisions, such as gender equality; hence, the change of terminology from 'man' to the more neutral 'person'. In addition to Section 365(a), the Vagrancy Ordinance has also been used to harass queer persons in public spots. There has been so far only anecdotal evidence of the use of this law, as well as that of Section 365, since there has been no research or study of the effects of this law. Queer groups, however, have frequently stated that some of their members have been harassed – blackmailed, threatened with exposition or arrest, etc - by the Police and others citing these legal provisions.

[...] 3. Findings

[...] 3.2. Family

This was a very important theme for many women and for almost all the women, a space of conflict. In some instances, there was isolation within family from a young age due to their perceived 'difference'. For others, conflict within the family was a direct result of their sexual orientation.

[...] 3.6. Relationships

Many of the women described their relationships as being the most important part of their lives at present. However, some interviews brought out the problems of sustaining relationships in a heterosexual culture like Sri Lanka where the stigma and discrimination has a negative impact on the relationships as well as the individuals.

[...] 3.8. Violence and discrimination

Along with poor mental health, the participants described many instances of discrimination and harassment. Without exception, all participants reported facing homophobic violence of differing intensities: verbal, psychological, and/or physical. Some of the abusive behaviours experienced were verbal abuse in public spheres, harassment by police and armed forces personnel, and physical violence faced in public places.

I noticed these guys mumbling and saying things at the back- they followed me. Called me names and the same thing- 'who do you think you are?' and things like 'Machang, with bitches like this, we wouldn't get any pussy..'.... just, just shit like that. Followed me into the car park, and two guys grabbed me from my shirt, and pushed me against the wall, and this other guy punched me in the stomach. And then from that point onwards, I don't know what happened, but there was this huge fistfight. They punched me, I punched them... er.... I remember hitting one guy till he fell to the floor, he couldn't get up I remember splitting one guy's lip. I was beaten up pretty bad, and..they left me there and when they realized that I wasn't obviously going to give up again I got up and started fighting, they left me there and they ran. (KP03) [...]

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

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

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

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

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

Cultural, socio-economic and geographic differences

The Executive Director of EQUAL GROUND expressed the opinion that LGBTIQ people in the Tamil or Muslim communities may face greater difficulties because these groups are "ultra conservative" (EQUAL GROUND 7 Dec. 2011). However, she also noted that the LGBTIQ community is "increasingly" threatened by Sinhalese Buddhist nationalists, among others, who claim that "homosexuality is a western value which erodes Sri Lankan culture, morals and family values" (ibid.). The Executive Director also provided the following information regarding socio-economic and regional differences within Sri Lanka with regard to the LGBT community:

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

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

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

Lesbian and bisexual women

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

Transgender people

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

[...] State protection

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

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

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

[...] The summary of EQUAL GROUND's submission to the UN Human Rights Council states that there was state-sanctioned hate speech directed towards the LGBT community (UN 3 Apr. 2008, para. 12). In June 2010, an article in the Sri Lankan daily newspaper the *Daily Mirror* quoted the Sri Lankan Prime Minister as stating it was "not wrong" for LGBT people "to seek rights" and that he was willing to listen to what they wanted (25 June 2010). However, according to the WSG shadow report, LGBT support organizations received no response from the Prime Minister after sending a joint letter asking for a meeting (WSG Jan. 2011, 2).

Support services

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

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

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

- [LGBT Asylum News/LGBT Sri Lanka, Video: Persecution of gay people in Sri Lanka, 18/01/2012](#)
[...] "Saman" is a graduate student in Sri Lanka who was doing research on 'safer sex' for his thesis. He told me that while he was working in the southern city of Galle, the local police detained and tortured him assuming he was gay. While in detention he witnessed how the Sri Lankan police discriminated against other allegedly gay men who were locked up in jail. Fearing retribution, Saman did not want to show his face or use his real name in recording this experience. Under the Sri Lankan penal code Section 365 A, homosexual acts are prohibited and "violators" face a penalty of up to 10 years in prison. While few cases have ever been prosecuted, the threat of public shame and blackmail looms large for Sri Lanka's gay community and this "dead letter" has become a greater threat in light of pervasive police corruption. This is only one example of the codified homophobia in Sri Lanka and its oppressive side-effects. Similar incidents are still happening to LGBT individuals in Sri Lanka on a regular basis. These incidents include, but are not limited to blackmail, violent threats, employment discrimination, and rejection by friends, family, the police, and society at large. Cases of physical assault, harassment, and detention are not uncommon. Regardless, these incidents are more or less ignored by the Sri Lankan media; even when they are reported, their connection to homophobia is rarely articulated. Of course, many LGBT individuals are happy to keep these incidents quiet, fearing that they would be subject to further attacks if they were outed. Both gay and straight Sri Lankans hold a negative view of homosexuality. [...]
- [LGBT Asylum News/Anonymous, Video: Sri Lankan gay activist speaks out, 26/11/2011](#)
[...] I am recording this video because I was arrested and put in jail two times in Sri Lanka for being a gay person. I am not mentioning my name here or either showing my face because I have to go back and forth to Sri Lanka to visit my parents. My parents do not allow my sexuality and I am not out to them about it. I am safe and living my gay life happily because now I live in outside of my country. I know lot of my fellow gay brothers and sisters are suffering in Sri Lanka because they were persecuted by Sri Lankan police and not getting any help from the Sri Lankan government either. Not only that, they were not accepted by the traditionally thinking society in Sri Lanka. Homosexuality is a criminal offense according to the penal code 365A in Sri Lanka. That you could be arrested and put in jail for up to 12 years. This is only two of many persecution incidents happened to me in Sri Lanka for being a gay person. Also, there are so many other gay brothers and sisters who have had or still having similar kind of persecutions or even worse incidents in Sri Lanka because of their sexuality. Most of these incidents are undocumented as everybody is scared to come out and tell about it. [...]
- [ILGA, State-sponsored Homophobia, May 2011](#)
[...] Sri Lanka

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Male/Male Illegal Female/Female Illegal

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

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

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

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

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

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

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

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

[...] Context and Background

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

[...] Article 1: Definition of Discrimination

Chapter 3 of the Constitution of Sri Lanka spells out the fundamental rights of citizens. Within Article 12 (2) is enshrined the principle of Non- Discrimination. It reads as follows: “No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex political opinion, place of birth or any such grounds”. Regrettably this provision does not explicitly protect persons of diverse sexual orientation or gender identities from being discriminated against. It must be noted that de facto discrimination against all women can only be eliminated when the principles of nondiscrimination and equality are guaranteed without distinction on the basis of sex, gender identity, gender expression, or sexual orientation, among other factors. Additionally, in other circumstances, aggrieved parties have recourse to the possibility of making an application before the Supreme Court, on the basis of their fundamental rights being violated. However since it has not been spelled out that sexual orientation and gender identity is a basis for the principle of non-discrimination to be upheld, LBT persons in Sri Lanka have no form of redress. The lack of

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protection of the right to equality and non discrimination for members of LBT communities in Sri Lanka leads to stigma and discrimination against them as well as to their being rendered invisible in the eyes of society and of the law. This factor plays a role in deterring lesbian, bisexual and transgendered people from reporting acts of discrimination, abuse and violence that they face to the relevant authorities.

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

Section 365a of the Penal Code of Sri Lanka is understood as criminalizing consensual same-sex sexual activity even in private spaces. Homosexuality therefore is seen as a criminal offense. This provision discriminates against lesbian, bisexual and transgender men and women by denying them their right to life, right to equality and right to choice. To date although there have been no convictions under this provision of the Penal Code, complaints have been received by police stations citing this provision. This criminalization paves the way for police and anti-gay groups to brand all lesbian, bisexual, transgendered persons as 'perverts' and criminals. The fear of being apprehended and identified as a person of non-normative sexual behavior or practice leads to a cycle of silence by members of the LBT community, by their families and friends and by the society as a whole and makes them vulnerable to a range of abuses including extortion, intimidation, unlawful arrest and detention, harassment and torture. Homophobic and transphobic articles repeatedly appear in the media, especially the print media, including in some State owned newspapers and in newspapers that follow State policy. These articles constitute a means by which society strengthens its resistance to recognition of LBT communities and continues to isolate, ridicule and justify acts of violence on members of the LBT communities⁷. With regard to women's sports teams, there have been unofficial reports where women who are key players in the National team have lost their positions once it has been speculated that they are lesbians. In this sense, there is direct discrimination which impedes the full enjoyment of the right to equality by specific categories of women in Sri Lanka who face discrimination due to their sexual orientation and gender identity/expression. .

Article 5: Sex Roles and Stereotypes

Sex Roles and Stereotypes

Lesbians, Bisexual women and Transgendered persons often grapple with issues relating to identity. Having been socialized within a hetero-patriarchal society that only sanctions the expression of biologically dictated gender identities, non-conforming individuals often resort to suicide and self harm due to the harassment and humiliation they face. While there have been a number of newspaper reports of joint suicides by two women, at least on two occasions, suicide notes had been left behind expressing their inability to face a life of separation. In such cases, it can be concluded that the women committed suicide due to that fact that their same-sex relationship was not recognized by society⁸. In the past there have been several cases of 'impersonation' and 'misrepresentation' brought to the courts in which women who have been 'disguised' as men have been 'discovered' and their 'true sexual identity' exposed to the public. Similarly, transwomen have also been arrested for 'misleading the public.'⁹

Dress Codes

In most government institutions since there is no formal document on dress codes, on many occasions, there is an informal understanding reading dress codes which apply only to women employees. In many cases, women are expected to wear the sari and are frowned upon if they do not conform to this dress code. Women who are part of the State Security Forces are required to wear a fitting skirt and blouse as their uniform. They are not given the option of wearing trousers, and have made unofficial complaints about hindrances to movement in the job they are supposed to perform Article 6: Trafficking and Prostitution The Vagrancy Ordinance of 1842 remains in place and continues to give authorities the power to detain people who they consider to be loitering in public; this provision allows for arrest and prosecution of sex workers. The police have the power to determine and interpret the law, and many times the Vagrancy Ordinance is used to wrongfully detain transgendered people, and people of sexual minorities because they appear to look different. In most cases it is those of the lower socio economic status who are the most vulnerable to this form of harassment; women including transwomen are particularly vulnerable to sexual harassment, abuse and mistreatment while in Police custody.

Article 7: Political and Public Life

Transgendered men and women in Sri Lanka are denied the right to recognition by the State due to the fact that there is no structured system which allows transgender men or women to alter the category of 'sex' on their Birth Certificate or National Identity Card. This has been left to the discretion of the medical practitioner who in effect, risks his license if he/she performs sex altering surgery on a client whose birth

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certificate notes his/her sex at birth. As there is no legal provision to change one's sex, people are advised to first change their birth certificates and only then go through with sex altering surgery; in effect putting the cart before the horse. However, since there are loopholes in the system, on two occasions a transman and a transwoman managed to succeed in changing the sex noted in his/her identity card from female to male/male to female. Nevertheless, it should be noted that the overarching taboo on the subject in law, policy and practice, and the lack of State initiative to recognize the existence of LBT communities in Sri Lanka results in their exclusion from development programmes, for example. This absence and silence strengthens the vulnerability of members of LBT communities to stigma and discrimination, as well as to violence.

Article 11: Employment

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

Article 12: Healthcare

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

behaviour between adults on the enjoyment of the right to health. Grover considers the “criminalization of consensual, same-sex conduct between adults, along with criminalization based upon sexual orientation or gender identity, to infringe the enjoyment of the right to health both directly and indirectly.” He further points out that “apart from failing to meet the objectives of criminal law, criminalization encourages violence, abuse and stigmatization, and impairs upon the dignity of individuals and infringes the enjoyment of the right to the health of same-sex communities”¹² Transgender men remain a section of the population most at risk of HIV. Sri Lanka’s report to the United Nations General Assembly Special Session on HIV/AIDs (UNGASS) 2008 – 2009, estimates there to be 35,000-47,000 sex workers in the country and 24,000-37,000 men who have sex with men (MSM)¹³. Since both behaviours are criminalized, access to health care services is severely compromised. An analysis of data from a study of MSM and transgender people in Asia conducted in 2008 concluded that:

- Stigma and discrimination, particularly amongst healthcare providers, is a major disincentive to seek treatment;
- Unethical disclosure of sexuality and/or HIV status by healthcare staff perpetuates distrust in local healthcare infrastructure;
- Strong cultural norms pertaining to sexuality impedes availability of accurate treatment information, creates the fear of disclosure, and an increased chance of social isolation and loss of social support;
- Gender-based discrimination makes treatment access an additional challenge for HIV-positive transgender people¹⁴.

Article 13: Economic and Social Benefits

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

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

[...] III. Eligibility for International Protection

[...] Potential Risk Profiles

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

“Homosexual conduct” is criminalized in Sri Lanka and punishable by fines and imprisonment for a maximum of 10 years for acts between adults, and ranging from 10 to 20 years for acts involving a minor below the age of 16. Although the relevant Penal Code provisions are not officially enforced, it has been reported that LGBT individuals may face harassment, extortion for money, demands for sexual favours and physical violence in Colombo and other areas. Societal stigma and discrimination against LGBT individuals is reportedly significant. NGOs working on LGBT issues do not always register with the Government, and it is reported that their offices and staff are sometimes targeted for reprisals. In light of the reported discrimination and acts of violence against LGBT individuals, as well as the criminalization of “homosexual conduct”, UNHCR considers that LGBT individuals may be at risk on account of their membership of a particular social group, i.e. their sexual orientation and/or gender identity, since they do not, or are perceived not to conform to prevailing legal, religious and social norms. Furthermore, the existence of significant criminal sanctions for “homosexual conduct” is likely to impede access to State protection, particularly where persecutory acts are perpetrated by nonState actors such as family or community members. [...]

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