

**IAGCI REVIEW OF THE UKBA OPERATIONAL GUIDANCE NOTE ON SRI LANKA  
(V13 APRIL 2012) – DAVID RAMPTON**

**SECTION A - SUMMARY OF FINDINGS**

The key findings of this review are firstly, that it contains a key thematic omission in relation to the current context of gender-related human rights abuses and risks, particularly in relation to the post-war landscape in the North-East of the country. Recent human rights advocacy as well as Tamil Diaspora media sources have stressed the way in which widows, single-headed households and single women are at increased vulnerability in terms of both access to livelihoods, health provision and welfare on the one hand as well as, on the other hand, to the risk of sexual harassment and violence.<sup>1</sup> This has been neglected in the OGN Report despite the heightened significance of gender in the current juncture and, although this is given prominence in the March 2012 COI, it is essential that this significance is emphasized in the OGN Report.

Secondly, whilst the OGN Report does include reference to some very recent human rights advocacy reports that have emerged between October 2011 and April 2012, it tends to be very selective about the utilization of these reports both within and across the different sections addressed. For instance, although there is attention in the section on ‘internal relocation’ to the impact of militarization and its effect on the human rights situation (at paragraphs 2.4.3 and 2.4.7), the logic and effects of expanding militarization are neglected in sections 3 and 4 as a whole as well as the sub-section on ‘actors of protection’ (paragraphs 2.3 - 2.3.7). This exclusion occurs despite the fact that there is a long-standing blurring of the role of the military and police (the role of which is addressed), both of which are involved in ongoing repression and securitizing counter-insurgency dynamics, which continue unabated through PTA practices despite the defeat of the LTTE. This has obvious implications for policy judgments about ‘actors of protection’ and their ability to perform protection functions as well as profound implications for the claims categories pertaining to the freedom and rights of minority groups, journalists, human rights defenders and suspected LTTE members. Some of the recent reports about militarization also have evidence that impacts upon claims for ‘discretionary leave’ as it has been asserted that militarized development is being imposed at the expense of basic livelihood, health and welfare infrastructure.<sup>2</sup> The section on Country Guidance Case-law also tends to ignore dialogue with advocacy material cited elsewhere in the report that may present a challenge to existing policy frameworks. For instance, the Freedom from Torture Report (2011) which is cited elsewhere in the OGN Report is neglected in this section despite the discussion of the risk and/or safety of returns. It is therefore essential that the sources are utilized with greater coherence and consistency across and within sections.

There is also insufficiently supported analysis. For instance the aforementioned section on ‘actors of protection’ attributes failures of protection to ‘corruption’ (paragraphs 2.3.4 – 2.3.5) rather than also to the dynamics of the ethnic conflict, to ongoing authoritarianism and counter-insurgency strategies. This is also evident in the failure to acknowledge the reasons behind and effect of the profound ethnicisation of both the military and the Police Service (paragraph 2.3.3). A concentration on corruption is reductive of the multivariate factors that reproduce failures in protection in the Sri Lankan context. If the OGN Report is to make judgments about the dynamics of (failures in) protection, it needs to be comprehensive in its coverage of sources providing analysis of these dynamics and the actors involved.

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<sup>1</sup> Minority Rights Group, *No war, no peace: the denial of minority rights and justice in Sri Lanka* 2011: <http://www.minorityrights.org/?lid=10458> ; ICG, *Sri Lanka: Women’s Insecurity in the North and East* Crisis Group Asia Report N°217, December 2011:

<http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>

<sup>2</sup> ICG, *Sri Lanka’s North II: Rebuilding under the Military*, Crisis Group Asia Report N°220, 16 March 2012 <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.pdf> ; ICG, *Sri Lanka: Women’s Insecurity in the North and East* Crisis Group Asia Report N°217, December 2011: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>

On this same issue of analysis there are also other examples. For instance, there is an over-reliance on the judgments and analysis of past test cases and some current sources which leads to a misunderstanding of the character and *modus operandi* of (both the past and) current post-war counter-insurgency strategy. In this the OGN report claims that arrests and detention of members of the Tamil community is primarily based upon “accurate” intelligence leading to the targeting of actual “LTTE members, fighters or operatives” (paragraph 2.5, TK (b), (c)). However, human rights advocacy reports indicate that the post-war targeting of suspected LTTE members is either arbitrary targeting of the Tamil community<sup>3</sup> or based on perceived family association with the LTTE or other political opposition groups.<sup>4</sup> This emphasis on perceived family association within a context, prior to their defeat, of widespread support for the LTTE in the North-East, forced recruitment of children and adults and the involvement of many Tamil civilians in support roles in the LTTE’s quasi-State means that suspected involvement potentially encompasses a very wide cross-section of the Tamil community in Sri Lanka, including family members and individuals peripheral to the insurgency.<sup>5</sup> It is also clear from current human rights advocacy reports that arrests and detention of people with suspected links to the LTTE are continuing in the contemporary period, as are ongoing dynamics of harassment, intimidation and re-arrest of those suspected and detained in the past.<sup>6</sup> Another example is the claim that there is an “overall improvement” in the situation for journalists and human rights defenders simply because no murders have taken place (paragraph 3.8.7). Consequently, the OGN Report needs to consider more carefully how current sources may challenge and affect current policy judgments in relation to particular claims categories.

Fourthly, at points there are also failures to provide any analysis at all of policy decisions when the OGN considers new evidence that may challenge the parameters of existing test cases. This is clear for example, in the dismissal of the *Freedom from Torture* and *Human Rights Watch* reports demanding that enforced returns to Sri Lanka are halted as they represent serious risks for returned failed asylum seekers (including those with scarring) from the Tamil community (paragraph 5.4).<sup>7</sup> For the sake of transparency in policy formulation, it is surely desirable for the OGN Report to offer reasons and analysis of why some state sources are privileged above non-state sources. This is especially the case given that media reports have indicated that a Tamil man deported from the UK was recently killed in Trincomalee.<sup>8</sup>

Lastly, in relation to the scope and range of sources, whilst many of the sections do counter-balance state sources with human rights advocacy material, including recent reports, there is a tendency to neglect Tamil media sources. The neglect of such sources can result in distortions of ongoing processes

<sup>3</sup> International Crisis Group (ICG), Sri Lanka: A Bitter Peace, Asia Briefing N°99: 11 January 2010, <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/b99%20sri%20lanka%20a%20bitter%20peace.ashx>: p.8 &18.

<sup>4</sup> FFT (2011) *Out of the Silence: Ongoing Torture in Sri Lanka*, Freedom From Torture: 2.

<sup>5</sup> It should be noted that this dynamic is not new. During the conflict period the security forces and the LTTE used to operate insurgency and counter-insurgency dynamics which related to extended family networks. The LTTE used to refer to any family that had sacrificed a family member for the liberation struggle as a *maveerar* (*heores*) family. The GoSL security forces would target these families in their counter-insurgency strategies. It should also be noted that there are other state measure that indicate a discriminatory targeting of the Tamil community including Police registration of Tamil citizens in many parts of the country, dynamics which have been noted in the UKBA March 2012 COI.

<sup>6</sup> ICG, *Reconciliation in Sri Lanka: Harder than Ever* Crisis Group Asia Report N°209, 18 July 2011: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/209%20Reconciliation%20in%20Sri%20Lanka%20-%20Harder%20than%20Ever.pdf> , pp.17-18; ICG, *Sri Lanka’s North I: The Denial of Minority Rights* Crisis Group Asia Report N°219, March 2012: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/219-sri-lankas-north-i-the-denial-of-minority-rights.pdf> pp.10-12; see also J Croos, D Uyangoda, R Fernando, “Threats, harassments and restrictions on former detainees and their families in the Vanni”, *TransCurrents*, 12 May 2011: <http://transcurrents.com/news-views/archives/424>

<sup>7</sup> FFT (2011) *Out of the Silence: Ongoing Torture in Sri Lanka*, Freedom From Torture; Human Rights Watch, ‘UK: Halt Deportation of Tamils’, *Human Rights Watch*, February 25<sup>th</sup> 2012 [www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka](http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka)

<sup>8</sup> Tamilnet, ‘UK deportee killed while Tamil Nadu returnees arrested in Trincomalee’, *TamilNet*, Saturday, 28 April 2012 <http://www.tamilnet.com/art.html?catid=13&artid=35136>

on the ground. For instance, the privileging of state (and other) sources indicates that cordon-and-search operations amongst the Tamil community have stopped (paragraph 2.4.4) whereas Tamil media sources provide consistent reports of ongoing cordon-and-search operations in the recent and contemporary period (see below). The lack of range of sources can also lead to distortions of the extent to which state apparatuses directly affecting the rule of law and due process are able to function independently. This is clear (at paragraphs 2.3.6 and 2.3.7 in relation to judicial independence and fundamental rights cases). It is therefore clear that a broader range of sources should be either directly consulted or that explicit reference should be made to relevant sections of the COI Report.

To conclude as a result of all the aforementioned problems, there is a tendency in the OGN, which is not the case with the Sri Lanka COI to represent Sri Lanka as a normalizing post-conflict space by citing references which claim an “overall improvement” rather than ongoing human rights abuses and restrictions on basic freedoms whereas the latter dynamics are more prevalent in the current context of increasing authoritarianism and militarisation.

## SECTION B – COMMENTARY ON SECTIONS

### Actors of Protection:

This section considers whether agents of state (or other protection actors) can be considered to provide effective protection for asylum applicants. It focuses primarily on police forces and it finds that the main problem with Sri Lanka’s Police Service is ‘corruption’. However, this is thin analysis of far more entrenched problem. Firstly, despite the fact that it is recognized in this section that the force is itself disproportionately Sinhala in composition, the consequences of this ethnic imbalance are not acknowledged. The imbalance itself is also somewhat obfuscated by stating that “(e)stimates of ethnic Tamils and Muslims in the police numbered several thousand” (paragraph 2.3.3), a claim that is itself undermined by the very statistics cited in the same paragraph. Secondly, it also tends to ignore the significance of the military as an actor that consistently fails in protection and does not fully draw out the blurring of distinctions between ‘civil’ policing and the military. Militarisation is endemic in Sri Lanka as this same OGN notes at paragraphs 2.4.3 and 2.4.7. The continued expansion of the military also surely impacts on the section, ‘Actors of protection’. Secondly, the use of PTA legislation within the current context in Sri Lanka has ensured the ongoing blurring of the lines between civil policing and the military as both military and police officers are allowed to hold prisoners without respect for rights, *habeas corpus* constraints, transparency or accountability. Thirdly and relatedly, it is not just a question of ‘corruption’ but of the ethno-national composition of the Police Force and the widely acknowledged ‘culture of impunity’ that inheres in governance and security practices, which cannot be reduced to ‘corruption’ which suggests that there is a certain measure of deviance from ‘normal’ practice when in fact ‘impunity’ is the norm.

This same section considers the judiciary and commences at paragraphs 2.3.6 and 2.3.7 with attributions of judicial independence and impartiality when in fact very recent extensive reports note both long-standing politicization of the whole criminal and judicial apparatus and a decline in fundamental rights cases because of political threat.<sup>9</sup> This section is therefore lacking in wider acknowledgement of the findings of sources it contains and those it fails to cite.

### Internal Relocation

This section relies predominantly on sources and test cases that have frequently asserted that the risk for returned asylum seekers whose claims relate to fear of persecution by the LTTE or GoSL or pro-GoSL forces. The problem with this section is that it presents a distorted view of the situation on the ground that either does not coincide with the description of the post-war situation contained in some of the sources cited in the OGN itself or neglects a broader range of sources providing evidence that conflicts

<sup>9</sup> International Bar Association, *Justice in retreat: A report on the independence of the legal profession and the rule of law in Sri Lanka* International Bar Association Human Rights Institute Report, May 2009: <http://www.ibanet.org/Document/Default.aspx?DocumentUid=C7793247-1498-409F-83D0-75B3DFD107C7> ; ICG, *Sri Lanka’s Judiciary: Politicised Courts, Compromised Rights* Crisis Group Asia Report N° 172, 30 June 2009: [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/172\\_sri\\_lankas\\_judiciary\\_politicised\\_courts\\_compromised\\_rights.ashx](http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/172_sri_lankas_judiciary_politicised_courts_compromised_rights.ashx)

with the sources cited. To give some examples, at paragraph 2.4.4 the OGN report cites evidence that cordon-and-search operations “have been stopped,” despite the fact that cordon-and-search operations and mass arrests still continue into the contemporary period in the North-East and South (including Colombo).<sup>10</sup>

### Country Guidance Case-law

The citation of the most recent test case at paragraph 2.5 (which includes an error in the opening paragraph) suggests that the situation in Sri Lanka no longer provides a risk for returning failed Tamil asylum seekers. However, a number of human rights advocacy reports cited elsewhere in the OGN have argued that torture and detention have continued to occur in the post-2009 period, citing evidence from asylum seekers recently arriving in the UK.<sup>11</sup> The FFT Report also asserts that scaring is used as identification of people who have been suspected of links to the LTTE. A recent press report also claimed that a Tamil deportee was recently killed in Trincomalee and that security forces had been dispatched to this eastern city to target returned asylum-seekers.<sup>12</sup> It should be noted that some of these sources (e.g. FFT; HRW) have been cited in the UKBA March 2012 COI or elsewhere in the OGN but are omitted in this section. The FFT reports also indicate that the targeting of Tamils is not just restricted to leadership but includes suspicion through perceived family association with the LTTE or opposition political party, encompassing large swathes of the Tamil community.<sup>13</sup> This is also indicated by the President’s own belief, for instance, that up to 10% of the population of Jaffna in the post-war situation are LTTE cadres.<sup>14</sup> Clearly, there is a need for the OGN to highlight these sources in order to present a balanced picture and what challenges recent advocacy material presents for test case-law frameworks.

### Main Categories of Claims

This section recognizes that there are ongoing human rights abuses and targeting of elements of the Tamil community but it could also draw on recent human rights advocacy reports to present a fuller picture, especially of the way in which expanding militarization is exacerbating this situation.<sup>15</sup> This section also recognizes the nuances in the relaxation of Emergency Regulations alongside ongoing PTA regulations. The section also acknowledges the ongoing wide-scale targeting, abduction (including by

<sup>10</sup> Tamilnet, ‘SLA, Police launch cordon, search in Trincomalee city’, *TamilNet*, Thursday, 05 January 2012 <http://www.tamilnet.com/art.html?catid=13&artid=34766> ; Tamilnet, ‘Search operation intensified in Colombo, residents asked to register’, *TamilNet*, Monday, 21 February 2011 <http://www.tamilnet.com/art.html?catid=13&artid=33575> ; Tamilnet, ‘SL Army, Police search Tamil residences in Trinco city’, *TamilNet*, Tuesday, 07 June 2011 <http://www.tamilnet.com/art.html?catid=13&artid=34037> ; Tamilnet, ‘UK deportee killed while Tamil Nadu returnees arrested in Trincomalee’, *TamilNet*, Saturday, 28 April 2012 <http://www.tamilnet.com/art.html?catid=13&artid=35136> ; Tamilnet, ‘220 Tamils arrested in SLA combing in Trincomalee’, *TamilNet*, Wednesday, 25 April 2012: <http://www.tamilnet.com/art.html?catid=13&artid=35125> ; Tamilnet, ‘Sri Lanka police arrest 52 Jaffna Tamils in Colombo’, *TamilNet*, Tuesday, 15 March 2011: <http://www.tamilnet.com/art.html?catid=13&artid=33675>

<sup>11</sup> FFT (2011) *Out of the Silence: Ongoing Torture in Sri Lanka*, Freedom From Torture.

<sup>12</sup> Tamilnet, ‘UK deportee killed while Tamil Nadu returnees arrested in Trincomalee’, *TamilNet*, Saturday, 28 April 2012 <http://www.tamilnet.com/art.html?catid=13&artid=35136>

<sup>13</sup> FFT (2011) *Out of the Silence: Ongoing Torture in Sri Lanka*, Freedom From Torture:2.

<sup>14</sup> A Acharya, ‘LTTE Diaspora Wars’, *South Asia Intelligence Review*, Weekly Assessments & Briefings, Volume 8, No. 49, June 14, 2010: [http://www.satp.org/satporgtp/sair/Archives/sair8/8\\_49.htm](http://www.satp.org/satporgtp/sair/Archives/sair8/8_49.htm)

<sup>15</sup> E.g. Minority Rights Group, *No war, no peace: the denial of minority rights and justice in Sri Lanka* 2011: <http://www.minorityrights.org/?lid=10458> ; ICG, *Sri Lanka’s North I: The Denial of Minority Rights* Crisis Group Asia Report N°219, March 2012: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/219-sri-lankas-north-i-the-denial-of-minority-rights.pdf> ; ICG, *Sri Lanka’s North II: Rebuilding under the Military*, Crisis Group Asia Report N°220, 16 March 2012 <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.pdf> ; ICG, *Sri Lanka: Women’s Insecurity in the North and East* Crisis Group Asia Report N°217, December 2011: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>

paramilitary groups), detention and torture of suspected ex-LTTE cadres, which is not restricted to those in leadership roles although it does omit to mention that the FFT report cited stresses that “a very large proportion of the Tamil population is at risk of being targeted” through actual or perceived family association<sup>16</sup> or connection to an opposition political party.<sup>17</sup> It also recognizes restrictions on freedoms of assembly and political participation and failures to ameliorate the human rights situation or accountability for abuses and war crimes, including the failure of the LLRC to address these issues. This section also presents conflicting perspectives of the consequences of return for failed asylum seekers and the utilization of scarring to identify suspected LTTE cadres. As with the UKBA March 2012 COI, the tendency here is to privilege the reports that de-emphasize risk to returnees including those with scarring. The danger is that this underestimates the extent of the risk.

The conclusion at paragraph 3.6.9, however, which asserts that the test cases reflect the reality of the current risks and risk categories on the ground contradict and are at odds with many of the findings stated by cited sources in this and other sections of the OGN and the March 2012 COI. As already stated this indicates that considerable risk accrues to “a very large proportion of the Tamil population.”<sup>18</sup> Recent reports also indicate that there is widespread harassment, intimidation and persecution of suspected ex-LTTE members in a situation of expanding militarisation,<sup>19</sup> which again suggests that the risk is much wider than actual operatives, combatants and leaders as this is based on perceived rather than actual membership on the one hand and because the LTTE had established a quasi-state prior to its defeat this also meant that numerous Tamils in the North-East were involved in non-combatant support roles.<sup>20</sup> At various points (paragraphs 3.6.42; 3.7.4-3.7.10), it is also suggested that the defeat, detention and release of surviving LTTE members indicates that successful post-conflict rehabilitation and reintegration is taking place with regard to the broader rank-and-file of the LTTE whereas recent human rights advocacy and media sources state that new arrests and detention of suspected LTTE members are taking place on a significant scale.<sup>21</sup> What is also neglected in this section is focus upon the gendered aspects of the risk presented to Tamil women and the sources that indicate that this is the case. This is a serious omission as numerous human rights advocacy sources have stressed the significance of gender in current and recent dynamics of harassment, human rights abuse and sexual violence.<sup>22</sup>

Therefore, based on this evidence in my opinion the policy conclusions are contestable and do not reflect the on-the-ground realities of the situation for the wider Tamil community and those perceived to be associated with the LTTE and opposition parties which suggests that it is not simply the well-informed targeting of operatives and ex-combatants. In relation to the potential exclusion of suspected LTTE members from the UK asylum process in relation to their involvement in human rights abuses, the issue of the wide participation of the Tamil community in support roles, the fact that there was widespread recruitment into as well as support for the LTTE should also be taken into account and acknowledged by the OGN report.

<sup>16</sup> FFT (2011) *Out of the Silence: Ongoing Torture in Sri Lanka*, Freedom From Torture: 2.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> ICG, *Reconciliation in Sri Lanka: Harder than Ever* Crisis Group Asia Report N°209, 18 July 2011: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/209%20Reconciliation%20in%20Sri%20Lanka%20-%20Harder%20than%20Ever.pdf> , pp.17-18; ICG, *Sri Lanka's North I: The Denial of Minority Rights* Crisis Group Asia Report N°219, March 2012: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/219-sri-lankas-north-i-the-denial-of-minority-rights.pdf> pp.10-12; see also J Croos, D Uyangoda, R Fernando, “Threats, harassments and restrictions on former detainees and their families in the Vanni”, *TransCurrents*, 12 May 2011: <http://transcurrents.com/news-views/archives/424>

<sup>20</sup> FFT (2011) *Out of the Silence: Ongoing Torture in Sri Lanka*, Freedom From Torture.

<sup>21</sup> ICG, *Reconciliation in Sri Lanka: Harder than Ever* Crisis Group Asia Report N°209, 18 July 2011: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/209%20Reconciliation%20in%20Sri%20Lanka%20-%20Harder%20than%20Ever.pdf> , pp.17-18.

<sup>22</sup> Minority Rights Group, *No war, no peace: the denial of minority rights and justice in Sri Lanka* 2011: <http://www.minorityrights.org/?lid=10458> ; ICG, *Sri Lanka: Women's Insecurity in the North and East* Crisis Group Asia Report N°217, December 2011: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>

On the whole, the issue of the profound risk to journalists and human rights defenders is well-represented in the OGN although the report should be wary of claiming that the landscape for journalists is one of “overall improvement” (paragraph 3.8.7), as this is simply not representative of the ongoing censorship and intimidation of journalists and human rights advocates and simply because the number of journalists murdered has declined does not indicate an amelioration of the context for the media or human rights advocates. This section should also include some citation of the way in which media workers have been targeted by PTA legislation including the high-profile arrest, detention and conviction of JS Tissainayagam.

The OGN report does cite sources recognizing the constraints on freedom of political assembly and participation, including threats made against opposition parties. However, it should also include the suppression of political dissent operative amongst the Tamil community in relation to the commemoration of both ‘Heroes Day’ in November 2011 and Mullivaikal Remembrance Day in May 2011.<sup>23</sup> The suppression of opposition has also extended to Jaffna University Students and to the JVP, with members of the Jaffna University and the JVP suffering attacks and/or abduction in the 2011-12 period.<sup>24</sup> The OGN should also be sceptical given the wide array of censorship and authoritarian repression to cite claims that the GoSL “generally respected... freedom of assembly” as this is contradicted by the aforementioned events and processes. Finally, this section recognizes the appalling prison and detention conditions in the country.

### **Discretionary Leave**

This section of the OGN report provides a better and more balanced picture of the mental health situation in the country than that contained in the March 2012 COI. However, it should also contextualise this lack in relation to the massive need for psychiatric and psychological support in the NorthEast of the country in relation to those that experienced the trauma of almost 30 years of war and especially the events of 2009.<sup>25</sup> In relation to this the OGN report also neglects sources which note the current failures in the provision of health and livelihood infrastructure in the North-East of the country,<sup>26</sup> as this will also impact upon claims to discretionary leave. The conclusion at paragraph 4.4.9 therefore remains equivocal if not confusing as it seems to suggest that despite the lack of mental health infrastructure that “discretionary leave will not be appropriate” but that in some individual cases this will be appropriate. This lack of clarity needs to be addressed.

In relation to the final section on returns, the UKBA “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” (paragraph 5.4). However, the OGN Report does not then offer analysis to support its judgment, which means that the consideration lacks reason or transparency. It should also be noted that since the OGN was issued it has been claimed that deportees have been explicitly targeted in security force operations and that one Tamil man, deported from the UK, has been killed.<sup>27</sup>

<sup>23</sup> ICG, *Sri Lanka's North I: The Denial of Minority Rights* Crisis Group Asia Report N°219, March 2012: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/219-sri-lankas-north-i-the-denial-of-minority-rights.pdf> : pp.13-16.

<sup>24</sup> E.g. BBC Sinhala, “Student leader ‘assaulted by military’”, *BBC Sinhala*, 17 October 2011: [http://www.bbc.co.uk/sinhala/news/story/2011/10/111017\\_jaffna\\_student.shtml](http://www.bbc.co.uk/sinhala/news/story/2011/10/111017_jaffna_student.shtml)

<sup>25</sup> ICG, *Sri Lanka's North II: Rebuilding under the Military*, Crisis Group Asia Report N°220, 16 March 2012 <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.pdf> : pp.11-13.

<sup>26</sup> ICG, *Sri Lanka's North II: Rebuilding under the Military*, Crisis Group Asia Report N°220, 16 March 2012 <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.pdf> : p.6; ICG, *Sri Lanka: Women's Insecurity in the North and East* Crisis Group Asia Report N°217, December 2011: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>

<sup>27</sup> Tamilnet, ‘UK deportee killed while Tamil Nadu returnees arrested in Trincomalee’, *TamilNet*, Saturday, 28 April 2012 <http://www.tamilnet.com/art.html?catid=13&artid=35136>