

**EVALUATION REPORT FOR COUNTRY INFORMATION  
ON SRI LANKA (IAGCI):**

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**30<sup>th</sup> April 2012**

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## **EVALUATION REPORT FOR COUNTRY INFORMATION ON SRI LANKA (IAGCI):**

### **A: Aims of the Evaluation:**

David Rampton was commissioned to complete this review in April 2012 as an evaluation of the Home Office UK Border Agency Sri Lanka Country of Origin Information Report (7 March 2012) in order to examine the Report in the light of sources used and in relation to other sources. This evaluation also seeks to check for accuracy, coherence, balance and emphasis in the use of sources as well as checking that the sources used are up-to-date and indicating where there are clear omissions of information and errors. It should be noted that the Author was also responsible for the writing of the April 2010 IAGCI evaluation and will also draw comparisons between the findings of that report and the current 2012 IAGCI evaluation to assess improvements or their lack in the current COI report.

### **B: Introduction and Summary of Findings:**

The following section seeks to outline a summary of findings drawn together from the analysis in Section C. Rather than repeat the findings contained in that section verbatim or at length, this section will briefly refer to relevant sections that exemplify specific problems condensed and analysed within the findings summary.

#### **1) The Overall Representation of the Current Context in Sri Lanka**

Overall, the 2012 COI presents a sound (albeit at points uneven) overview of the contemporary situation in Sri Lanka. It has not for instance fallen into the trap of prejudging the on-the-ground context as ‘post-conflict’ and then filtering cited sources that reinforce and conform to the representation of the country as a normalising ‘post-conflict’ space; a tendency that has prejudiced the overall picture of the human rights and protection landscape for some recent reports from other agencies focusing on the current context in Sri Lanka.<sup>1</sup> To that extent, the 2012 COI has actually expanded in scope and range in the post-2009 context, which reflects the ongoing human rights abuses and risks and instability presented in the current landscape.

#### **2) Comparing the 2012 and 2010 COI reports**

The current 2012 COI Report reflects a marked albeit uneven improvement from the 2010 version. It produces more balance in many sections due to the use of a greater heterogeneity of sources, particularly in relation to the use of a good range of human rights advocacy and INGO/NGO literature that is essential for a good understanding of the situation in Sri Lanka in the current context of intensifying authoritarian control over many media, NGO and governmental sources.

Therefore the current 2012 COI report has continued to improve upon one of the central criticisms of the 2010 COI which was that it tended to be over-reliant on State sources both from the GoSL and from foreign State agencies such as the United States State Department and the FCO/BHC.

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<sup>1</sup> For example, the UNHCR (2010) *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, United Nations High Commissioner for Refugees, 5<sup>th</sup> July 2010.

As a result this evaluation recognises that highly significant improvements have been or continue to be made to the sections on Prison and Detention Centre Conditions (11), Freedom of Speech and Media (14), Human Rights Institutions (15) and Lesbian, Gay, Bisexual and Transgender Persons (19). These sections frequently reflect the citation of a broader use of sources, giving a balanced picture of the background or human rights situation than that presented in both the 2006 COI and the 2010 COI. There are also particular sub-sections cited below which have achieved a considerable standard in detail, coverage, balance and range of sources for a report of this kind.

Other sections where some improvements have been made but where these improvements have been uneven across sub-sections or continue to present problems within or across sub-sections vis-à-vis balance and range of sources, coverage, detail and content include the sections on Geography (1), History (3), Recent Developments (4), Security Forces and Paramilitary Groups (8), Arrest and Detention (10), Prison and Detention (11), Political Affiliation (13), Women (20), Children (21) and Freedom of Movement (25). The remaining sections present more serious problems in relation to balance, range of sources, coverage, detail and/or content within or across sub-sections and this is inclusive of Economy (2), Constitution (5), Political System (6), Human Rights – Introduction (7), Judiciary (9), Corruption (16), Freedom of Religion (17), Ethnic Groups (18), Medical Issues (23) and Humanitarian Issues and IDPs (24). Some of the more serious problems identified in a number of these latter sections show continuities with similar problems identified in the 2010 COI (e.g. sections 2, 6, 9, 16, 17, 18, 23).

### **3) Structuring**

Although it is understood that the structuring of the COI Report is reflective of its purpose, which is to give an overview of the country situation and to assist case officers in assessment of asylum claims, there are areas where the structure of the report could be improved. For instance, the History Section (3) could have tighter chronological ordering through the use of sub-headings to denote particular historical periods. This would also serve to both identify and therefore avoid gaps identified in this section (mentioned below in Section B4) with regard to the 2002 to 2006 peace process.

In terms of structuring and layout, as cited in the 2010 evaluation, there is still a tendency to place State sources (such as the USSD and BHC/FCO) in a position of hierarchical dominance and priority over non-state media and NGO sources in the ordering of the sections and subsections. In some sections where there is a sharp divergence between state and non-state perspectives on a given theme, event or process, this produces a privileging of state over non-state viewpoints purely by virtue of the order in which they appear in a given section or sub-section rather than a sharp imbalance being a result of the lack of alternate viewpoints. This is most clearly exemplified in sub-sections 25.29 to 25.53 in which most of the state perspectives (e.g. DIE, FCO/BHC) have understood the return of failed asylum-seekers to be a relatively smooth, orderly and safe process without adverse consequences for returnees. This contrasts with those perspectives which have either come directly from NGO sources (e.g. FFT) or cite such sources (IRB) to raise profound concerns, with very justified reason, as to the very negative consequences that deportation and return can have for failed asylum seekers. These are all placed in a subordinate

position in the text to the aforementioned state sources. It would therefore be worthwhile considering how the ordering may be thematically interspersed or randomised to ensure that this kind of privileging of state sources is not consistently reproduced within the text. This has been achieved in other sections of this COI report.

[COIS: We will address this issue in the respective sections below.](#)

#### **4) Omissions**

One of the sets of criticisms raised in regard to both the 2006 and 2010 COI reports was in relation to omissions. The current 2012 COI shows an overall improvement in scope, coverage and the range of sources cited and this has led to a parallel improvement in reducing omission of key events and processes. However, there are still key points where omissions have taken place. In Section 3 on ‘History, Key Political Events and Internal Conflict’ there are gaps in coverage, particularly of practically the whole period of the 2002 to 2006 UNF-led peace process and Ceasefire Agreement and this was also apparent in the 2010 COI. Although, it should be noted that this was a period of ceasefire, as stated in the running commentary on the text in Section C, this period was still one in which a ‘shadow war’ between the LTTE on the one hand and the GoSL and its paramilitary allies on the other was operating. This ‘shadow war’ involved intelligence activities, low-intensity conflict dynamics, assassinations and extra-judicial killings perpetrated by both sides. It also marked a historical moment for the emergence of the Karuna Group and TMVP off-shoots from the LTTE and their increasing involvement in the abduction and disappearances of Tamil and Muslim civilians. It is therefore essential that this period is included within this section as it forms a key aspect of recent historical and political processes and will doubtless serve as background for asylum cases, especially as the leadership and cadre base of these organisations are still intact and intricately involved with the Sri Lankan government at the highest levels.

Other key omissions which impact upon the scope and depth of some of the Sections include failures to discuss the broad but combined dynamics of state centralisation, of Sinhala nationalist hegemonisation and patronage that are key to understanding the ‘real world’ dynamics and functioning of the Political System (Section 6). Other sections where the coverage of issues is thematically thin include the coverage of processes of authoritarian centralisation, politicisation and the erosion of independence, checks and balances in the Sections on the Judiciary (9) and the Constitution (5). Providing sufficient detail and analysis of these processes is key to a well-informed and considered assessment of the extent to which Sri Lankan citizens can access protection, fair trials and due process in policing and legal procedures. Other omissions are mainly a result of lack of evidence, detail and or cross-referencing rather than the broad-brush exclusions outlined above. This, for instance, includes failures to provide adequate citation about the gendered aspects of the treatment of suspected LTTE cadres at Section 4 or the failure in Sections 3 and 14 to include sufficient coverage on the very high-profile assassinations of figures such as the journalists Sivaram Dharmaratnam and Lasantha Wickrematunge despite the fact that these killings typify the growth of authoritarianism and human violations within a culture of impunity. Other examples reflect a lack of detail on, for instance, the experiences and conditions faced by residents, returnees and IDPs in the NorthEast with regard to lack of infrastructure, food security, livelihood or health and education

resources at Sections 23 and 24 or the extent to which communities in the South, North and East face particular infringements of the right to political expression and assembly in Section 13.

Finally, as noted in the 2010 COI, the section on ‘Corruption’ remains excessively thin given the significant scale of this problem in Sri Lanka. Many of these omissions overlap with and can be resolved by more extensive and balanced coverage of particular media or NGO and human rights advocacy materials that provide a thicker description of on-the-ground realities.

**COIS: We will address this issue in the respective sections below.**

### **5) Sources and Selectivity**

The 2012 COI demonstrates considerable improvement in many of the sections vis-à-vis the selection and range of sources and as overall sections, those on Prison and Detention Centre Conditions (11), Freedom of Speech and Media (14), Human Rights Institutions (15) and Lesbian, Gay, Bisexual and Transgender Persons (19) stand out for the breadth and range of sources utilised which produces depth of coverage and attention to detail. There are also sub-sections that demonstrate what can be achieved through a thorough and varied overview of sources, including human rights advocacy material, foreign, local and Diaspora news media. These include sub-sections 8.18 to 8.54 on Human Rights Violations by Police and Armed Forces and 10.04 on Emergency Regulations and the PTA. These are examples of what every section in the COI should aim to achieve as they produce balance and depth and thickness of detail through a diverse plurality of non-hierarchically ordered materials.

However, there are some other sections and sub-sections that have not achieved this standard. Consequently, some key examples shall be cited to demonstrate how a lack of diversity in sources has created either imbalance and/or distortion or even errors in the representations of the facts on the ground. Firstly, Section 17 on Freedom of Religion relies upon the US State Department’s 2010 International Religious Freedom Report to chart religious demographics and regional distributions. This is at best a caricature and at worst an error as it does not capture nuanced differences in the regional make-up of religious affiliation. For instance, it is not the case that the East is predominantly Muslim as all the districts of the Eastern Province (especially Batticaloa) have sizable demographic concentrations of Tamil communities who are predominantly Hindu. Some of these districts (particularly Trincomalee and Ampara) also have sizable Sinhala populations from relatively recent settlement processes, who are predominantly Buddhist. The North is not “almost exclusively Hindu” (paragraph 17.01) as it has sizable Roman Catholic Tamil communities and a long-displaced Muslim community from areas such as Jaffna. The very same Section (17) also claims that “there were no attacks against Muslims” in 2010 which again is inaccurate. What this indicates is that this Section requires attention to a more diverse range of materials so that the editorial corroboration of sources can occur and the Section and the COI as a whole cannot be accused of dependence on erroneous and/or unreliable sources that reproduce error.<sup>2</sup>

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<sup>2</sup> For suggested sources see the relevant Section in Section C of this evaluation. Where possible all suggested sources have been restricted to internet-accessible policy reports rather than more arcane academic materials.

A second problem in the selectivity of sources lies with a failure to cite the widely available materials from human advocacy organisations which frequently remain the only well-researched and detailed reports emerging from a context of heightened GoSL censorship, control and coercion of media and other NGOs sources. The failure to provide cross-corroboration of existing sources with human rights advocacy sources such as the International Bar Association, International Crisis Group, Human Rights Watch and Minority Rights Group has impoverished the understanding of a number of issues. Key examples from the 2012 COI Report are in the sections on the Situation of (Suspected Members) of the LTTE (4), Judiciary (9), Children (21), Medical Issues (23) and Humanitarian Issues and IDPs (24). These are areas where NGO and human rights advocacy reports have provided both analysis of the context and structures and a wealth of on-the-ground detail of how human beings experience these processes and contexts. For a number of the sections cited above key to this is the current context in the NorthEast with organisations such as the ICG providing crucial evidence as to the daily ‘real world’ dynamics experienced. Without both corroboration and addition from these sources, many of these sections provide an imbalanced if not distorted picture of the ground realities. This is partly due to the fact that state sources (e.g. BHC/FCO) frequently rely on governmental sources and interviewees for their information or have concrete interests in producing a positive ‘spin’ on aid programmes they are funding (e.g. sub- sections 4.17-4.25 on the BHC’s involvement in the rehabilitation of ‘former LTTE cares’). However, these sources need to be balanced by voices and perspectives that are in contestation with the ‘official’ register.

Thirdly, there are sections in the report that are impoverished or imbalanced by a failure to cite key local sources or to corroborate existing sources with key local sources. Key examples of where such sections require additional citation from local or Diaspora sources include Section 4.0 on Recent Developments, Section 8.0 on Security Forces, Paramilitary Groups, The Police, Armed Forces and Desertion and Section 25.0 on Freedom of Movement which included significant information on ongoing arrests, detention and cordon-and-search operations. Finally it should be noted that although some local and Diaspora sources (e.g. Sri Lanka Guardian and Tamilnet), have been used these are used sporadically and thinly. In addition, there are still other sources including the Tamil Guardian, DBSJeyaraj.com, UTHR, Transcurrents.com that could be more widely utilised and cited in the 2012 COI Report as a whole. Therefore, although the range of sources has significantly improved there is still some way to go before all sections of the Sri Lanka COI reflect the balance, depth and detail that comes from the prudent use of plural sources.

**COIS: we will address the subject where it arises in the relevant sections below.**

## **C: COMMENTARY AND ANALYSIS OF THE 2012 COI REPORT:**

This part of the IAGCI report produces a section-by-section analysis of the 2012 COI. The enumerated bullets reflect the bulleting of the original 2012 COI report for ease of cross-reference but evaluation paragraphs may refer to multiple sub-sections or single sections where indicated. Occasionally, sections have been omitted because these sections were considered as broadly unproblematic in either or both the 2010 and 2012 COI and therefore did not warrant comment with reference to either substantial improvements or ongoing problems. In some sections the author may indicate that issues, processes or news items of significance have been omitted.

### **LATEST NEWS:**

#### **Events in Sri Lanka from 4<sup>Th</sup> February to 2 March 2012**

##### **2 March**

The report mentions that the UN High Commissioner for Human Rights commended Sri Lanka for the publication of the Lessons Learned and Reconciliation Commission report in December 2011. It should be noted that this same report has been widely condemned for lack of accountability and for a failure to fully acknowledge or engage with issues concerning allegations of widespread human rights abuses in the last stages of the war in the 2008 to 2009 period. For the sake of balance, reference should be made to these criticisms.

COIS: Not accepted.

The Latest News is a non-exhaustive selection of significant events between 4 February and 2 March 2012 without attempting to analyse or to provide additional background information: simply bringing users' attention to the existence of the article.

##### **29 February**

There is a citation from a GoSL website and BHC correspondence about the deportation and return of 52 failed asylum seekers from Sri Lanka. These reports depict a smooth process without adverse consequence for the returnees. It should be noted that a number of other sources have indicated ongoing human rights abuses and torture suffered by returnees. However, some balance is achieved in this section of the COI by including a 25 February report of a HRW press release reporting these findings. The presence of BHC staff may well preclude adverse attention and human rights abuses that may be visited on returnees at a later date when BHC staff are no longer monitoring the situation.

COIS: Not accepted.

As previous comment. Also, as noted by the reviewer, the HRW report is mentioned under the 25/2 entry

##### **24 February**



There is a citation of a BBC Sinhala service report citing the GoSL Dept of Census and Statistics claim that 9,000 died in the final phase of the war. The extract taken from this report makes it appear that the BBC Sinhala Service is accepting this version of events whereas, for balanced reporting, the same report goes on to offer the UN panel figure of 40,000 and emphasises the ongoing contentions over the question of numbers killed.

COIS: Accepted.

### **23 February**

It should be noted that a significant development has been omitted from the *Latest News* section, namely the ousting of Major General Shavendra Silva of Sri Lanka from the Special Advisory Group of the UN by Louise Frechette, Chair of the UN SAG, due to ongoing accusations of war crimes leveled against the Sri Lankan Military and against Shavendra Silva who commanded the 58<sup>th</sup> Division in the final phases of the war. This news is significant in the ongoing question of State complicity in war crimes which in turn impacts upon questions of protection, judicial process, rule of law and accountability amongst State officials and apparatuses in Sri Lanka.

COIS: Not accepted.

See previous comments about the nature of the Latest News section. The selection of sources is done on their potential relevance to decision makers; we did not consider this news directly relevant to asylum applications and appeals based on our experience of decision makers needs. The choice of sources is, to some extent, subjective and it is likely we will have a different perspective from the reviewer on whether some items should be included, as is the case here.

### **17 February**

There is citation of a Government media source declaring the reinstatement of the National Police Commission, the monitoring watchdog of the Sri Lankan Police Service. However, for balance rather than using a government source which suggests that this event indicates normalisation, other local media and rights advocacy sources have also noted that the NPC is considerably weakened as a check on the security forces in its current form because after the passing of the 18<sup>th</sup> Amendment to the Constitution, “the powers of appointment, promotion, transfer, disciplinary control and dismissal of Police Officers other than the Inspector General of Police, which were vested in the Commission, including the exercise of its powers of promotion, transfer, disciplinary control and dismissal in consultation with the Inspector General of Police as mandated by Article 155G (1) (a).of the Seventeenth Amendment have been removed.”<sup>3</sup> For a balanced understanding of the implications of the reinstatement, these sources should also have been cited.

COIS: Accepted.

### **9 February**

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<sup>3</sup> L Keerthisinghe, ‘The Powers of the National Police Commission’, *Lanka Standard*, 29 February 2012: <http://www.lankastandard.com/2012/02/the-powers-of-the-national-police-commission/>

There is a citation from a Government website claiming that 40 ex-LTTE cadres have been rehabilitated and reintegrated into society, adding to 490 ex-cadres released as of that date, leaving only 970 ex-cadres in detention. It should be noted that sources from the same time span as the *Latest News* section have expressed serious concern over the lack of transparency concerning the number of those detained, the refusal to reveal the identities of those detained and ongoing harassment of released ex-cadres.<sup>4</sup> The *Latest News* section should have included these reports in order to achieve a balanced picture of the latest human rights situation on the ground in Sri Lanka. This is even more vital given that the at least one source raising these concerns in this period has been cited under the section, Reports Published or Accessed Between 4 February and 2 March 2012.<sup>5</sup>

COIS: Not accepted.

The 'Latest News' section includes 'news' items, articles and press releases, such as the Government website announcement. More substantial reports, such as the ICG document referred, which tend to cover a range of issues, are listed in the 'Reports on Sri Lanka Published...' section beneath. We have included the ICG, as noted by the reviewer, in the following section and consider that though the sections are split cumulatively balance is achieved.

It is perhaps worth adding that the section's aim is to provide a list of noteworthy events for a certain timeframe – this may not always result in balanced coverage.

#### **Useful News Sources for Further Information**

Whilst this section offers a reasonable range of UK Government, GOSL, international media, international humanitarian and human rights advocacy sources and this represents an improvement upon the 2010 COI report, there is still a lack of media sources from the Tamil community (e.g. Tamil Guardian, Tamilnet.com, dbsjeyaraj.com ). This was cited in the 2010 IAGCI Review but has still not been addressed in this Sri Lanka COI. Whilst it is often countered that local and Diaspora Tamil sources are biased, the same accusation can be levelled at all sources to differing degrees but particularly GoSL sources which have been liberally cited in this section. It is notable that it is frequently these Tamil media sources, which report the on-the-ground micro-dynamics as they occur day-to-day, thereby giving significant detail of the political and human rights situation, especially in the North and East of the country.

COIS: Accepted.

We will expand the range of sources to provide a greater diversity of views. Part of the reason that Tamil sources are not referred is it can be difficult to

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<sup>4</sup> ICG, 'Sri Lanka: Government Promises: Ground Realities', 1 March 2012: <http://www.crisisgroup.org/en/publication-type/media-releases/2012/asia/sri-lanka-government-promises-ground-reality.aspx>

<sup>5</sup> ICG, 'Sri Lanka: Government Promises: Ground Realities', 1 March 2012: <http://www.crisisgroup.org/en/publication-type/media-releases/2012/asia/sri-lanka-government-promises-ground-reality.aspx>

determine the agenda or providence of information, making the information they contain more fragile.

We will also give some thought as to how sources are referred and make more explicit the potential for bias and lack of balance in all sources but particularly the lesser known.

## **BACKGROUND INFORMATION:**

### **1.0 - 1.09 Geography:**

The 2010 IAGCI review had noted that the 2010 COI had failed to account for the fact that the Northern and Eastern provinces were officially demerged in January 2007. It is commendable that this has now been rectified.

As stated previously in the December 2006 APCI evaluation and the 2010 IAGCI review, the citing of census statistics after 1981 is problematic as census data collection has been seriously impeded by the dynamics of the conflict and displacement resulting, as is recognised by the 2012 COI report in consistent failures to enumerate populations in some Northern and Eastern districts of high Tamil and/or Muslim demographic concentration. As a consequence, the citation in paragraph 1.02 of the Sinhala population as constituting 82% of the population and Sri Lankan Tamil 4.3% is at the very least highly contentious. Although, these figures used to be counter-balanced by a USSD estimate at the end of the same paragraph, it is now lamentable that this paragraph in the 2012 COI now only cites figures from the CIA World Factbook and the 2001 Census (which as acknowledged was incomplete) and has since dropped USSD figures. It is recommended that the USSD website is cited in order to provide counterweight, and if possible, the figures from the last comprehensive GoSL census in 1981. This is especially vital given the discrepancy in information between paragraphs 1.03 and 1.02 with the former citing figures of 15% for the Hindu population despite the fact that the overwhelming majority of Hindus in Sri Lanka are also Tamils. These discrepancies would be better understood if the contentiousness of demographic statistics were acknowledged and/or rival sets of statistics offered in paragraph 1.02.

COIS: Accepted.

It would be helpful if some suitable sources could be provided.

### **2.0 – 2.06 Economy**

Although it is understood that these sections are included to provide very brief and rudimentary background information, it should be noted that there are three key areas and/or developments that should be briefly addressed when looking at historical processes of economic development, especially as they interlock with past and contemporary conflict and human rights issues. The first historical dynamic is that processes of economic development in the North and East of Sri Lanka have frequently involved demographic changes through settlement programmes that have sought to move predominantly Sinhala settlers into areas of Tamil and Muslim demographic concentration that the latter communities see as ‘homelands’. These areas also have also suffered from disparities in development as a result of years of conflict and/or economic blockade if they were areas under LTTE control prior to

their defeat in 2009. These issues, which are addressed in OGNs by the UKBA where they are relevant (e.g. the Occupied Palestinian Territories),<sup>6</sup> should be acknowledged either in this section or elsewhere in the History section and two ICG reports would prove useful sources to cite from.<sup>7</sup> These sources were cited in the 2010 COI evaluation.

Related to this same point a key development in the economy is the increasing militarisation of society with the military forming a public sector employment scheme on a grand-scale and reports that the military is becoming increasingly involved in commercial and business activities particularly as a manifestation of securitised control of the North of the country. Some attention in the future should be paid to sources that have recently taken note of these developments (after the publication of the current 2012 COI) as they will play a key role in the future and are an essential part of background knowledge on economic development.<sup>8</sup>

Finally, the background section on the economy is lacking in attention to the core areas of production, services and trade which are essential to the background. These can easily be accessed and referenced in condensed form from sites such as the USSD site or the CIA World Factbook.<sup>9</sup>

COIS: Partially accepted.

We will address the third point in the next update.

While we acknowledge that an understanding of the economic context to Sri Lanka is broadly relevant to decision makers we consider aim of this section, and for the purposes of users, the suggested detail is not essential.

Thank you for the sources.

### **3.0 – 3.31 History, Key Political Events and the Internal Conflict**

The first point to note in evaluating this background is that there are some notable omissions from this historical overview of key political events despite the fact that some periods get extensive treatment. For instance, whilst the coverage is understandably emphasising more recent events since 2005 and there is extensive coverage of elections, the conflict and the war crimes issue, the coverage of the period between 1948 and the 1990s has some notable gaps in empirical detail or analysis.

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<sup>6</sup>UKBA *Operational Guidance Note; The Occupied Palestinian Territories* UKBA OGN v3.10 February 2012:

[http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/occu\\_pales\\_terri?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/occu_pales_terri?view=Binary)

<sup>7</sup> International Crisis Group, *Sri Lanka's Eastern Province: Land, Development, Conflict* Crisis Group Asia Report N°159, 15 October 2008:

[http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/159\\_sri\\_lanka\\_s\\_eastern\\_province\\_land\\_development\\_conflict.pdf](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/159_sri_lanka_s_eastern_province_land_development_conflict.pdf) ; International Crisis Group, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province*, Crisis Group Asia Report N°165, 16 April 2009: [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/159\\_sri\\_lanka\\_s\\_eastern\\_province\\_land\\_development\\_conflict.pdf](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/159_sri_lanka_s_eastern_province_land_development_conflict.pdf)

<sup>8</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>

<sup>9</sup> E.g. USSD Background Note: Sri Lanka: <http://www.state.gov/r/pa/ei/bgn/5249.htm>

Whilst it is understood that contemporary events are far more significant to the utility of the report, some brief mention should be made of key issues that have affected citizenship structures and the unevenness in rights across ethnic divides. This would include both the 1948-9 Citizenship Acts, which effectively deprived Upcountry Tamils of their citizenship rights and the 1956 election, which acted as a landmark to the Sinhala nationalist logic of mainstream politics which has impacted upon the reproduction of the conflict. Although extensive coverage of these issues is not necessary, a brief citation is essential for historical background. These issues have been dealt with in relatively recent policy briefings and reports.<sup>10</sup>

COIS: Accepted.

One other key area that is omitted is practically the whole period of the 2002 to 2006 UNF-led peace process and Ceasefire Agreement which is notable by its absence despite the fact that major political events and processes were emergent and occurred during this period. Indeed, there is a significant gap in coverage of political events in this period aside from an overly brief mention of the LTTE split and emergence of the Karuna faction in 2004 and of the resumption of war in 2006 at paragraph 3.23. What is notable in this period is that, despite the CFA and peace process between the GoSL and LTTE being operative during this period, a ‘shadow war’ between the LTTE on the one hand and the GoSL security and intelligence forces and their paramilitary allies on the other was underway at this time. The ‘shadow war’ does not just refer to intelligence-gathering exercises but to moments of persecutory violence with widespread repercussions. This included high profile killings including the assassination of the TNA MPs Aryanayagam Chandra Nehru, Joseph Parajasingham and Nadarajah Raviraj in the 2005 to 2006 period, the assassination of the politician and GoSL Foreign Minister Lakshman Kadirgamar in August 2005, of Ministers DM Dissanayake and Jeyaraj Fernandopulle in 2008 and the killing of Kethesh Loganathan of the NGO, the *Centre for Policy Alternatives*, in the midst of the renewal of war in August 2006. These high profile political events are merely the tip of an iceberg. As NGOs like the *University Teachers for Human Rights* documented at the time, these high profile events were accompanied by child recruitment processes, widespread ground-level assassinations, harassment and persecution which affected wider swathes of the population in Colombo, the North and East either by GoSL security forces, by their paramilitary allies or by the LTTE.<sup>11</sup> It is essential that a document which is to be utilised by UKBA asylum case officers contains these key events and processes either under key political events or under the section on the ‘internal conflict’ (which they are inherently related to) because these events will be pertinent and significant in a range of asylum cases where accounts and the testing of their veracity date back to this period. This section of the report also fails to mention the clearing of the LTTE and GoSL military victory in the Eastern Province in 2007 and the holding of local elections to the Eastern Provincial Council in 2008, both of which are without doubt key political events.

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<sup>10</sup> See D Rampton and A Welikala *The Politics of the South* (Asia Foundation 2005): <http://asiafoundation.org/resources/pdfs/SLPoliticsoftheSouth.pdf> ; N DeVotta *Sinhalese Buddhist Nationalist Ideology*, Policy Studies 40, (East-West Centre 2007):<http://www.eastwestcenter.org/sites/default/files/private/ps040.pdf> ; J Uyangoda *Ethnic Conflict in Sri Lanka: Changing Dynamics* Policy Studies 32, (East-West Centre 2007): <http://www.eastwestcenter.org/sites/default/files/private/PS032.pdf>

<sup>11</sup> See <http://www.uthr.org/> for any of their reports relevant to a particular period.

COIS: Accepted. We will add material on the ceasefire period.

Another omission from the key political events section is attacks upon the media which include the high profile abduction and assassination of journalist Dharmaratnam Sivaram in May 2005 and the internationally reported assassination of the Editor of the Sunday Leader, Lasantha Wickrematunge in January 2009. Again, these ‘events’ are just high profile instances of much wider dynamics that have affected journalists throughout Sri Lanka without the same level of international attention.<sup>12</sup> They are key political events because they demonstrate the highly authoritarian suppression of dissent. They therefore deserve attention here.

COIS: Not accepted.

Our challenge is to balance sufficient detail against providing a succinct introduction to the main political events and issues. The events referred are certainly of general relevance but on balance we think the detail is not necessary here (the underlying point about the situation is clear from the existing information). To this end we don't think the suggested details are necessary here.

Further information on problems faced by the media is available in Section 14, Freedom of speech and media, and political activists in Section 13, Political affiliation.

One key issue which is cited here at paragraph 3.19 is the appointment of four Commissions, the Public Service Commission, the Human Rights Commission of Sri Lanka, the Commission to Investigate Allegations of Bribery and Corruption and the Finance Commission. Whilst this is a key political event what is not cited in this section is the passing of the 18<sup>th</sup> Amendment to the Constitution in September 2010, which facilitated the appointment of these commissions. This amendment removed the 17<sup>th</sup> Amendment which allowed for cross-party selection of a constitutional council independent of the President which served to appoint judges and members of the aforementioned commissions, therefore acting as a check-and-balance on presidential power. The 18<sup>th</sup> Amendment also removed term limits on presidential office.<sup>13</sup> The passing of the 18<sup>th</sup> Amendment is therefore of far greater political significance and indeed encompasses the appointment of these commissions and should therefore be cited in this section. In terms of constitutional issues of political significance what is also omitted in this section is the demerger of the Northern and

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<sup>12</sup> AI (2008) ‘Silencing Dissent’, *Amnesty International*, 7 February 2008, AI Index: ASA 37/001/2008; Reporters without Borders ‘Authorities continue drive to stamp out pro-opposition media’, Reporters without Borders, 29<sup>th</sup> April 2011: <http://en.rsf.org/sri-lanka-authorities-continue-drive-to-29-04-2011,40136.html> ; Reporters without Borders (2011a) ‘Authorities step up intimidation, jailing lankaenews editor’, Reporters without Borders, 31<sup>st</sup> March 2011: <http://en.rsf.org/sri-lanka-authorities-step-up-intimidation-31-03-2011,39927.html> ; Reporters without Borders (2011c) ‘Opposition newspaper editor badly beaten in Jaffna, left for dead’, Reporters without Borders, 30<sup>th</sup> July 2011: <http://en.rsf.org/sri-lanka-opposition-newspaper-editor-badly-30-07-2011,40720.html>

<sup>13</sup> Transparency International 2010; CPAb 2010; Asian Human Rights Commission ‘The Last Debate on the Sri Lankan Constitution’, *Article 2*, Vol. 9, No. 3: <http://www.humanrights.asia/resources/journals-magazines/article2/0903/the-last-debate-on-the-sri-lankan-constitution>

Eastern provinces in January 2007 which acted to undermine potential for devolution of power to Tamil-speaking majority areas.

COIS: Accepted.

Will add in mention of this in the next update.

The section on internal conflict does devote a number of pages to the final stages of the war and some of the war crimes allegations. However, it omits to mention allegations of the execution and disappearances of suspected LTTE cadres and of civilians and does not fully address the restrictions on humanitarian access in this period (and its aftermath).

COIS: Accepted. Will add reference to this and cross refer to other relevant sections.

As a whole, these two sections demonstrate fair coverage of electoral issues and some of the key events and shifts in the conflict. However, there is a tendency to concentrate on singular and high-profile events at the expense of more general processes which actually affect wider swathes of populations and communities. In this way, the wider impact of the ‘shadow war’ cited above and the abductions, violent assaults on journalistic freedom, the long history of processes of securitisation and displacement (through for instance the cordoning off of High Security Zones in areas of the North and East) and the experiences of sexual violence and (often gendered) human rights abuse that have accompanied displacement and the ‘post-conflict’ landscape for civilians in a context of intensifying militarisation are somewhat neglected.<sup>14</sup> Consequently, there may be a case for identifying key processes and events in order to capture the way in which the wider populace has experienced these dynamics.

COIS: Not accepted.

While we accept the general point that there is more that could be said about the conflict that would inform decision makers, this needs to be balanced against maintaining a relatively brief and accessible introduction to the main events. On balance, we consider less detail here is sufficient for decision makers, but we will consider adding links for further detail.

In relation to sources used in this section, although there is some use of INGO and NGO reports, there is overall an over-reliance on FCO and EIU material and where local NGO sources have been used, which is commendable as this was one of the criticisms made of the 2010 COI Report, this has frequently been restricted to electoral issues. As mentioned above other local NGOs and INGO sources provide a much thicker description of the processes that have been at work during this period which have had extensive repercussions for the wider set of communities in Sri Lanka. The section on war crimes could also have cited the UN Panel of Experts

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<sup>14</sup> See for instance, Minority Rights Group, *No war, no peace: the denial of minority rights and justice in Sri Lanka* 2011: <http://www.minorityrights.org/?lid=10458> ; Human Rights Watch, *Recurring Nightmare: State Responsibility for ‘Disappearances’ and Abductions in Sri Lanka* March 2008: <http://hrw.org/en/reports/2008/03/05/recurring-nightmare-0>

Report released in 2011 (discussed later at paragraph 3.51) which contains estimates of civilian deaths and very detailed examination of the full range of war crimes allegations and the on-the-ground humanitarian situation.<sup>15</sup>

COIS. Partially accepted.

Again, we need to set the reviewer's valid points against the aim of the section to provide a relatively general, easily accessible overview of events. To this end, we consider the further detail is unnecessary here.

We will refer to the UN report in the next update.

### **3.32-3.47 Government Treatment of (Suspected) Members of the LTTE (up to December 2010)**

This section is, on the whole, balanced in its focus on detained LTTE suspects citing a fair range of sources that have either asserted that their treatment has been without incident to those that have asserted that torture and human rights abuses against suspected former LTTE cadres have been commonplace. Sources have been used which also highlight the sometimes seemingly arbitrary and sometimes wide assumption of connections to the LTTE on the part of Government authorities and security forces.

Although, it has been addressed in the section on the 'Legacy of the Conflict', the widely reported execution and disappearances of LTTE suspects is given very limited focus in this section despite its primary importance to this particular theme. Reducing its emphasis in this particular section may inadvertently give the impression that the treatment of LTTE suspects is not life-threatening despite the fact that copious evidence has been presented of executions and disappearances taking place at the end of the conflict and in its aftermath.<sup>16</sup> It is therefore essential that these issues are discussed at greater length in this section as well.

COIS: Partially accepted.

As noted by the reviewer, reported abuses against former LTTE suspects are covered elsewhere in the section. However, we accept that it is also relevant to this section but to avoid repetition we will provide more substantial cross-referencing with other sections in the report.

Again, although these issues are addressed in the section on women at 20.41 to 20.55, there is also a complete neglect of the gendered aspects of the treatment of suspected former LTTE cadres in this section. There has been copious reporting of suspected former female LTTE cadres being subjected to harassment, sexual violence and rape.<sup>17</sup> As this relates directly to this thematic section, it is better that there is

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<sup>15</sup> Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka, United Nations, 31<sup>st</sup> March 2011.

<sup>16</sup> See Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka, United Nations, 31<sup>st</sup> March 2011, p.50. See also ICG *War Crimes in Sri Lanka*, Crisis Group Asia Report N°191 – 17 May 2010, pp.7-8.

<sup>17</sup> Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka, United Nations, 31<sup>st</sup> March 2011, p.44, p.50, p.60. ICG, *Sri Lanka: Women's Insecurity in the North and East* Crisis Group Asia Report N°217, December 2011:



repetition across sections rather than omitting a very significant dynamic relevant to this theme from direct citation in this section.

COIS: Partially accepted.

We accept that the treatment of female LTTE cadres is relevant however we rather than provided repetitive detail we propose providing a brief mention of the issue augmented with clear cross-referencing to section 20.

### **3.48-3.50 The Conflict's Legacy**

The introduction of this new section adds some necessary overview of the repercussions of the end of the conflict including the war crimes issue and failures of reconciliation. However, this section could also provide a little more detail on the dynamic of militarisation which is only mentioned in passing in the very last citation when the dynamics of militarisation are manifold (gender issues, disparities in development, High Security Zones, human rights abuses etc.) and with considerable potential for the return of conflict in the North and East. The section should therefore expand on some of these dynamics utilising the reports cited.<sup>18</sup>

COIS: Accepted.

### **3.51-3.56 The Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, United Nations, April 2011**

This section does effectively address a number of the 'war crimes' issues including civilian deaths caused by GoSL artillery bombardment targeted upon the 'no-fire' zone including on medical facilities, the denial of humanitarian access, the LTTE's use of civilians as a human shield and the violation of rights of refugees and suspected LTTE cadres. However, as with some of the aforementioned sections, explicit and clear reference to accusations and evidence of disappearances, executions and sexual violence perpetrated against suspected LTTE cadres and civilians is neglected. As these are also key findings of the UN Panel of Experts Report, these issues should also be mentioned.<sup>19</sup>

COIS: Partially accepted.

The purpose of this sub-section is to provide an outline of the main issues raised by the UN report, and this regard we do not consider further detail necessary – readers have access to the original document in the annex. But we will add cross-references to other sections, explaining their relevance.

### **3.57-3.59 The Ministry of Defence Report covering events between July 2006 and May 2009.**

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<http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf> , pp.25-27.

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

<sup>19</sup> Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka, United Nations, 31<sup>st</sup> March 2011.

This section provides a clear and very balanced summary of the report, its claims and the reaction by human rights advocacy organisations.

### **3.60-3.68 The LLRC**

Again, this section on the whole provides a clear and balanced summary of the LLRC report, its key claims and including the nuanced difference in the reaction of leading human rights advocacy organisations, the ICG, HRW and Amnesty International. It should, however, also address some of the concerns that were made into the process through which the commission heard evidence. Critics have argued that the commission members lacked independence that the constitution of the commission membership demonstrated a clear ethnic and gender bias, that the process was under-resourced and that it lacked any sort of witness protection measures. These criticisms and the wider response of members of the Tamil community should also be taken on board.<sup>20</sup>

COIS: Accepted.

### **4.0-4.14 Recent Developments (July 2011 to January 2012)**

The section on recent developments includes and covers issues such as the 2011 local authority elections, the ‘Grease Yakka’ phenomenon and the latest developments in relation to the LLRC and the ‘white flag’ war crimes issue. However, due to a comparative neglect of local and Tamil media sources as well as of human rights advocacy literature, there are some key omissions in this section. Key developments that require some citation at this time include attacks on journalists that took place repeatedly between July and August 2011.<sup>21</sup> What is also neglected between August and December 2011 is the rise of death threats, attacks and abductions focused upon students at Jaffna University,<sup>22</sup> a key development that is missed because news sources that focus on local incidents in the North-East of the country (such as Tamilnet which covered these repeated incidents) are consistently neglected despite recommendations in the APCI and IAGCI reviews of the 2006 and 2010 COI reports that these sources be included in the media consulted. Although electoral violence is discussed in this section, the focus is on the mainstream parties whilst instances of violence against parties such as the JVP and TNA are again neglected.<sup>23</sup> Human rights advocates also released reports during this period which have stressed the continuing processes of militarisation and the effects of this in the NorthEast and this should be included in a section on ‘key recent developments’.<sup>24</sup> Tamil media sources have also

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<sup>20</sup> TNA, *Response to the Lessons Learnt And Reconciliation Commission Report* TNA, January 2012.

<sup>21</sup> See Reporters without Borders (2011c) ‘Opposition newspaper editor badly beaten in Jaffna, left for dead’, Reporters without Borders, 30<sup>th</sup> July 2011: <http://en.rsf.org/sri-lanka-opposition-newspaper-editor-badly-30-07-2011,40720.html> ; see also Sri Lanka Guardian, (2011) ‘Media owner threatened, Editor severely assaulted, correspondents harassed’, Sri Lanka Guardian, 4th August 2011: <http://www.srilankaguardian.org/2011/08/media-owner-threatened-editor-severely.html> ; See also Tamilnet’s news archive for this period.

<sup>22</sup> See Tamilnet’s news archive for this period: [www.tamilnet.com](http://www.tamilnet.com).

<sup>23</sup> See also Tamilnet’s news archive for this period: [www.tamilnet.com](http://www.tamilnet.com).

<sup>24</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.13-17; 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>

stressed the ongoing discriminatory processes of surveillance and police registration of Tamil communities in the Northeast and Colombo,<sup>25</sup> developments that have been corroborated by recent human rights advocacy reports.<sup>26</sup> Finally, what merits discussion during this period is the removal of the Emergency Regulations in August 2011, which nonetheless should be cited alongside reports which emphasise that the draconian provisions of the Prevention of Terrorism Act are still in place and have indeed been reinforced.<sup>27</sup>

COIS: Accepted.

#### **4.15-4.32 Situation of (Suspected) Members of the LTTE**

This is a very extensive overview of the current situation for suspected LTTE cadres in the island. However, there is excessive use of the BHC source cited which is problematic (in terms of balance) given that the British Government, along with the Dutch and US are funding the IOM programme which is the main focus of the BHC correspondence on this issue. Whilst this source does acknowledge that there are some problems with the release and reintegration of suspected LTTE cadres, this section also needs to take note of more critical voices who argue that the numbers cited of detainees are full of contradictions and lacking in transparency, that those detained are held without charge and are denied basic legal rights.<sup>28</sup> There are also criticisms that “after release from their arbitrary detention, many former detainees are regularly re-arrested, harassed or used as informants by the military, with no system of independent monitoring of their treatment or protection in place.”<sup>29</sup> What is also significant in relation to this issue is that the GoSL does not plan to dismantle but transfer more people into this system.<sup>30</sup> Accordingly, this section requires further engagement with and citation of a wider set of sources in order to achieve balance.

COIS: Accepted.

It should be noted however, that the IGC report mentioned at footnote 29 only became available after the publication of the COIS report.

#### **5.0-5.06 Constitution and the 18<sup>th</sup> Amendment**

Although there is reasonable coverage of the 18<sup>th</sup> Amendment to the Constitution which was passed in September 2011, in order to understand the impact of the 18<sup>th</sup> Amendment, the brief paragraph on the 17<sup>th</sup> Amendment at 5.02, should be expanded

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<sup>25</sup> See Tamilnet’s news archive for this period: [www.tamilnet.com](http://www.tamilnet.com).

<sup>26</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.9-10.

<sup>27</sup> HRW (2011) ‘Sri Lanka: ‘Bait and Switch’ on Emergency Law’, *Human Rights Watch*, 7th September 2011: <http://www.hrw.org/news/2011/09/07/sri-lanka-bait-and-switch-emergency-law>

<sup>28</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>29</sup> Ibid., p.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>30</sup> Ibid.

to cite some discussion of the checks and balances that this amendment in principle provided, especially in relation to the various commissions established by the 17<sup>th</sup> Amendment and therefore a fuller understanding of how these have been removed through the passage of the 18<sup>th</sup> Amendment.<sup>31</sup> As previously stated in the 2010 IAGCI review, this section could also point to and foreground wider problems with the 1978 Constitution in the form of its creation of an expansively powered executive presidency, its maintenance of a centralised, unitary state framework and its refusal to relinquish the hierarchic majoritarianism that has given to the state the role to “protect and foster” Buddhism which is given the “foremost place” and forges a profound nexus of Sinhala nationalist identity, the Buddhist religion and state power which, at the same time, subordinates and marginalises other ‘minority groups’.<sup>32</sup> More specifically, some mention should clearly be made about the ramifications of the demerger of the Northern and Eastern provinces in October 2006 for a solution to the ethnic conflict as this is key to past conflict and to what the future holds in terms of further human rights abuses experienced by minorities. Additionally, some attention should also be paid to the recent All Party Representative Committee (APRC) process for constitutional reform and the way it has become the victim of presidential fiat. Sources, should therefore be scrutinised which reflect the significance of flaws in post-independence constitution-building and their contribution to the escalation of the ethnic conflict and the way in which debates and tensions around constitutional reform have at times been key to the aspirations of Tamil nationalists and other supporters of federalism as well as to Sinhala nationalist anxieties about a ‘divided country’. What is also lacking are sources which discuss the failures of constitutionality in the Sri Lankan context in which political interests and facets of centrist political culture tend to contribute to state centralisation or to undermine what few safeguards and checks there are to executive power and the power of the centre

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<sup>31</sup> For further information on the 17<sup>th</sup> Amendment see 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) ; ICG, *Sri Lanka’s Human Rights Crisis*, Crisis Group Asia Report N°135 – 14 June 2007: [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/135\\_sri\\_lanka\\_s\\_human\\_rights\\_crisis.ashx](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/135_sri_lanka_s_human_rights_crisis.ashx)

<sup>32</sup> For discussion of this see, Government of Sri Lanka, *The Constitution of the Democratic Socialist Republic of Sri Lanka* (Govt. Printing Dept.1978); R Edrisinha and A Welikala (eds). *Essays on Federalism in Sri Lanka* (CPA 2008).

vis-à-vis levels of governance and the judiciary.<sup>33</sup> As a result, the use of human rights advocacy sources on the Constitution would improve this section yet further.<sup>34</sup>

COIS: Not accepted.

While an interesting issue which provides an insight into the conflict we consider that expanding the section with further detail is unnecessary for the purposes of decision makers.

#### 6.0-6.04 Political System

This section is on the one hand a reasonably effective account of the formal structure of the political system at the centre. On the other hand it does omit reference to key issues and dynamics. This includes the centralised character of the political system and the failures of local governance structures as recognised by state sponsored commissions and the way that this has provided scant regard for principles of subsidiarity or federal devolution in the functioning of the political system which may have provided the autonomy consistently demanded by the Tamil political parties since the 1950s.<sup>35</sup> Consequently, as there is a profound overlap between these issues and constitutional matters, it may be worthwhile merging these two sections. This section also fails to discuss two key elements of the functioning of the political system and of political culture in the island in firstly, Sinhala nationalism and secondly, patron-clientelism. As stated in the 2010 IAGCI review, this section could therefore cite from policy papers and reports that refer to these dynamics as they are key to a fuller understanding of the political system and indeed of the dynamics that have marginalised the Tamil-speaking communities, incited authoritarianism and contributed to the recurrence of conflict and human rights abuses.<sup>36</sup>

<sup>33</sup> 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-](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/172_sri_lankas_judiciary_politicised_courts_compromised_rights.ashx)

[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)

W e l i k a l a , A . ( 2 0 0 8 )

‘ T h e d e v o l u t i o n p r o j e c t i n S r i L a n k a : t o w a r d s t w o n a t i o n s i n o n e s t a t e ’ , i n

R . E d i r i s i n h a a n d

A . W e l i k a l a ( e d s . )

*E s s a y s o n*

*F e d e r a l i s m i n S r i*

*L a n k a , C P A .*

<sup>34</sup> For example, material from the Centre for Policy Alternative's Legal and Constitutional Unit at [www.cpalanka.org](http://www.cpalanka.org) or ICG

<sup>35</sup> GoSL, *Report of The Commission of Inquiry into Local Government Reform* Government of Sri Lanka Publishing (1999). See also the LLRC *Lessons Learned and Reconciliation Commission Report* (GoSL, November 2011):

[http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf](http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf)

:pp.304-307.

<sup>36</sup> See D Rampton and A Welikala *The Politics of the South* (Asia Foundation 2005):

<http://asiafoundation.org/resources/pdfs/SLPoliticsoftheSouth.pdf> ; N DeVotta *Sinhalese Buddhist Nationalist Ideology*, Policy Studies 40, (East-West Centre

2007):<http://www.eastwestcenter.org/sites/default/files/private/ps040.pdf> ; ICG *Sri Lanka:*

*Sinhala Nationalism and the Elusive Southern Consensus*, Crisis Group Asia Report N°141 – 7

November 2007: [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/sri_lanka_sinhala_nationalism_and_the_elusive_southern_consensus.ashx)

[lanka/sri\\_lanka\\_sinhala\\_nationalism\\_and\\_the\\_elusive\\_southern\\_consensus.ashx](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/sri_lanka_sinhala_nationalism_and_the_elusive_southern_consensus.ashx)

COIS: Not accepted.

The content of this section, as for many of the report's sections is based on COIS' standard template and based on our experience of the needs of decision makers. Our aim is to provide a brief outline of the formal structure of the political system without commentary on how it functions or its origin. More information on political rights and dynamics is provided at Section 13.

We consider that expanding on the points above is not necessary.

#### **7.0-7.04 Human Rights - Introduction**

The introduction to the human rights section cites predominantly from government sources including the FCO and the USSD. However, given that the focus is on human rights, one would have expected a wider use of sources and specifically material from human rights advocacy organisations whose central goal and mission is the monitoring, protection and defence of human rights including Amnesty International, Human Rights Watch and the International Crisis Group. At paragraph 7.02 an FCO source claims that in 2010 “the humanitarian situation improved significantly.” However, this assertion is contested by human rights advocacy sources, which instead suggested as of mid-2011 that the humanitarian context was still problematic. It has been asserted that both humanitarian and development programming were (and still are) tightly controlled by the central hub of the regime including particularly the Ministry of Defence, the Presidential Task Force (PTF) and the Ministry of Economic Development all state organs led by Mahinda, Gothabaya or Basil Rajapaksa.<sup>37</sup> In July 2011 the ICG was in the same report calling for the GoSL to open up the country for humanitarian access and stating that it was “difficult to get approval to do anything beyond building houses – despite the desperate need for local capacity and support to those who have lost family members”.<sup>38</sup> Recent reports have noted that in 2010 the stress was on infrastructure roads, railroads, electricity and water supply and that there was a relative lack of donor funds or programming for humanitarian projects.<sup>39</sup>

COIS: Accepted.

The section provides an introduction to human rights, details are provided in the following sections, and the sources chosen tend to summarize the overall picture, and so it is our intention to keep this section brief. That said, we will consider adding further sources to add range and depth and directing users to the following sections which cover human rights issues in more detail.

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<sup>37</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.13-15. This is also corroborated by my own in-depth interviews and discussion with Aid donors in July and September 2010, Colombo.

<sup>38</sup> Ibid., p.6, p.14.

<sup>39</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> : p.32.

There is also a citation in this section from the Economist Intelligence Unit at paragraph 7.04 on the growth of authoritarianism with the consolidation of the power of the Rajapaksa family and the UPFA Government. Whilst the growth of authoritarianism to the ongoing decline in the human rights situation is highly relevant, this particular citation would also be useful in the preceding section on the political system as it is making judgments about the functioning of democracy and the significance of patronage which were missing in this section.

COIS: Accepted.

### **8.0-8.17 Security Forces, Paramilitary Groups, The Police, Armed Forces and Desertion**

These sections are a fairly comprehensive account of the basic structure and issues surrounding the Sri Lankan military and police including the problem of desertion and the lack of legitimacy that the security forces have amongst the Tamil community due to the history of the conflict, the narrow Sinhala ethnic composition and nationalist goals and trappings of the security forces in Sri Lanka. However, the statistics and overall focus in this section requires updating and expanding in focus and use of sources in order to note the continuing post-war expansion of the military. Although some of this material was not available at the time that this COI report was released, there are now human rights advocacy reports focusing specifically on the role of the military in the North.<sup>40</sup> ICG reports prior to this date had also noted this trend,<sup>41</sup> as had Tamil media sources such as Tamilnet and the Tamil Guardian.

COIS: Accepted.

It would be however useful to have more specific references to the media sources and reports mentioned.

### **8.18-8.54 Human Rights Violations by the Police and Armed Forces, Disappearances/Abductions, Torture, Extra-Judicial Killings**

This section, comprising sub-sections on arbitrary arrest, detention, disappearances/abductions, extra-judicial killings and torture when read in conjunction also with additional UKBA reports (i.e. the Report on Torture and Ill-Treatment), provides a comprehensive and thorough overview of these ongoing human right violations in the aftermath of the conflict, including detail on local incidents. It also includes citations stressing the continuity of many of these practices between the period of conflict and its aftermath (e.g. paragraph 8.45). Part of the strength of this section of the 2012 COI and the Report on Torture and Ill-Treatment is the use of a wide range of State (e.g. USSD, FCO), human rights advocacy (e.g. FFT, HRW, AI) and local media sources (e.g. Tamilnet, Sri Lanka Brief). This section

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<sup>40</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](http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.pdf)

<sup>41</sup> E.g. 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> :p.13-17. 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>

stands as testament to what can be achieved in terms of balance, range and depth if a full range of sources are surveyed.

On one minor point at 8.21 there is discussion of the mass detention of 100 Tamil men from the village of Navanthurai in the Jaffna District in August 2011. It should be noted that this detention is related to the 'Grease Yakka' phenomenon and further citation or cross-reference is required in order to clarify and explain the phenomenon.<sup>42</sup> Overlapping with this previous point, this section also lacks attention to the gendered aspects of human rights violations by security forces which requires attention to further human rights advocacy material in relation to these dynamics.<sup>43</sup> There is also a case for citing or at least cross-referencing the treatment of suspected LTTE cadres.

COIS: Accepted.

### **8.55-8.59 Pro-Government Paramilitary Groups and Human Rights Violations**

Given the period of focus, this section should include mention of the Karuna Group. Although there are contending voices as to the extent of paramilitary activity of the Karuna Group since Vinayagamurthi Muralitharan (AKA Karuna) became a UPFA Minister,<sup>44</sup> it is unlikely that Karuna's cadre base has completely disarmed in a context of ongoing rivalry with the TMVP in the Eastern Province. The Karuna Group should therefore be included in the focus on paramilitaries. This section also concentrates too heavily on State sources that produce a picture of significant reduction of abductions and disappearances conducted by paramilitaries. However this is far from the ground reality represented by other sources, which, whilst registering a decline in overall numbers, still indicate the activity of paramilitaries in the 2011-12 period, particularly the EPDP. This is easily gleaned from media sources in Sri Lanka.<sup>45</sup> This is also confirmed by a recent human rights advocacy report which states that violence in the North may have declined in early to mid 2011 but rose

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<sup>42</sup> E.g. Quarter two update to the Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report, 30 June 2011 <http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/sri-lanka/>

<sup>43</sup> *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> ; Pp.25-27. Minority Rights Group, *No war, no peace: the denial of minority rights and justice in Sri Lanka* 2011: <http://www.minorityrights.org/?lid=10458> : pp.9-10.

<sup>44</sup> Immigration and Refugee Board of Canada, 'Sri Lanka: The Tamil Makkal Viduthalai Pulikal (TMVP) and Karuna factions; their relationship with each other; reports concerning their treatment of Sinhalese and Tamil citizens; whether they are still active as paramilitary groups', Immigration and Refugee Board of Canada, February 2012: <http://www.unhcr.org/refworld/docid/4f4f35d2.html>

<sup>45</sup> Tamilnet, 'EPDP accused of post-2006 killings as SLFP-EPDP feud escalates in Jaffna', *Tamilnet*, Sunday, 01 January 2012: <http://www.tamilnet.com/art.html?catid=13&artid=34756> ; Tamilnet 'EPDP assaults youth leader of TNA in Kilinochchi', *Tamilnet*, 23 July 2011: <http://www.tamilnet.com/art.html?catid=13&artid=34218> ; Dianne Silva. "Stop Paramilitary Activity in North; US Tells Govt." *Daily Mirror* [Colombo]. 14 September 2011: <http://www.dailymirror.lk/news/13565-encouraged-by-tna-govt-talks-blake.html> ; S. R. Ratnajeewan H. Hoole. "Do Not Take the Tamils to be Fools," *Sunday Leader*, 31 July 2011: <http://www.thesundayleader.lk/2011/07/31/do-not-take-the-tamils-to-be-fools/>



again in the latter part of 2011 and that the EPDP has perpetrated attacks and abductions against TNA politicians, local journalists and students.<sup>46</sup>

COIS: Accepted. Will revise in light of comments above.

### **8.60-8.68 Avenues of Complaint, Impunity, the HRCSL and Witness Protection**

These sections, especially through the focus on impunity, do indicate the lack of mechanisms to bring perpetrators of human rights violations to justice. However, by placing the rather favourable verdict about fundamental rights cases ahead of more damning verdicts on the failure of human rights monitoring and the lack of criminal and judicial proceedings against violations, this section may create the impression that the general picture is one of independence and impartial proceedings slowed down by bureaucratic bottlenecks, when the verdict from state and human rights advocacy sources is of general impunity and the failure of state to protect many of its citizens (including witnesses) effectively. The section also fails to acknowledge sources that have noted the decline in fundamental rights case applications that have been subject to firstly, dismissal at the *leave to proceed* stage under the custodianship of the Chief Justice Sarath Silva, and, secondly fundamental rights lawyers have been subject to attack and threats when filing petitions, trends that critics certainly see as evidence of an autocratic and politicised judicial system.<sup>47</sup>

This section should also include citation about or cross referencing to the issue of war crimes and the consistent denial of these allegations by the Sri Lankan State and its failure to provide effective avenues of complaint except for the LLRC which remained broadly silent on issues of accountability as human rights defenders noted.<sup>48</sup> There is also a relative neglect in this section of the way gender-based violence is itself neglected within this generalised structure of impunity.<sup>49</sup> Indeed, it should be noted in this section that the State has not only failed to take up action against alleged perpetrators of sexual violence but has explicitly denied or belittled the allegations.<sup>50</sup>

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<sup>46</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>

<sup>47</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> : pp.34-35.

<sup>48</sup> HRW, 'Sri Lanka: Report Fails to Advance Accountability: Governments Should Act on UN Panel Call for International Investigation', *Human Rights Watch* Press Release, 16 December 2011: <http://www.hrw.org/news/2011/12/16/sri-lanka-report-fails-advance-accountability>

<sup>49</sup> 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> pp.12-18; "Concluding observations of the Committee on the Elimination of Discrimination against Women: Sri Lanka", CEDAW/C/LKA/CO/7, 4 February 2011: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LKA-CO-7.pdf> ; Women and Media Collective, "Shadowing the State through CEDAW: A compilation of the Sri Lanka NGO Shadow Report, CEDAW Concluding Observations and other documents 2010/2011", The Women and Media Collective, June 2010: [http://www.womenandmedia.net/legal\\_statements/Final\\_English\\_CEDAW\\_Shawad\\_Report\\_for\\_WM\\_C\\_Web.pdf](http://www.womenandmedia.net/legal_statements/Final_English_CEDAW_Shawad_Report_for_WM_C_Web.pdf)

<sup>50</sup> 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->

What should also be addressed here is the lack of independence of bodies such as the HRCSL and the National Police Commission with the implementation of the 18<sup>th</sup> Amendment as these commissions are now appointed by the President, removing the checks and balances which allowed for independent monitoring. Finally, some mention should be made of the fact that, along with the general functioning of the criminal justice system, even the LLRC was completely lacking in witness protection measures.<sup>51</sup>

COIS: Accepted. Will revise in light of comments above.

### **9.0-9.06 Judiciary, Organisation, Independence, Fair Trial and Penal Code**

This section gives a basic overview of the formal legal structure in Sri Lanka. However, given the myriad problems and failures observed in the judicial process (including many issues discussed elsewhere in the 2012 COI) the coverage of these issues seems very thin, a weakness that had been noted in both the 2006 APCI and the 2010 IAGCI reviews. What needs to be included in this section is a more sustained engagement with the way in which the independence of the judiciary is profoundly compromised and the judiciary is highly politicised. Furthermore, discussion is required of the way this has been exacerbated by the 18<sup>th</sup> Amendment which has led to the abolition of the 17<sup>th</sup> Amendment Constitutional Council overseeing appointments in an independent manner to the Judicial Services Commission (appointing legal officers and judges) and replaced by a Parliamentary Council appointed by the President. This is not well understood or presented within the USSD 2010 Report extract cited at paragraph 9.04. There are a number of reports that could be cited that deal with the past and recent history of these issues.<sup>52</sup> More detail on these issues was also a recommendation of the IAGCI 2010 review.

The sub-section at 9.05 on Fair Trial tends to emphasise that the main challenge to the trial process is a bureaucratic backlog although this would seem marginal to the wider problems that impact upon the legal system and trial process in Sri Lanka. This includes not only the judiciary's lack of independence and its politicisation as cited above but the way in which the practices in the legal system lack basic safeguards for transparency, accountability and operate as a completely ineffective framework for delivering due process, fairness and justice. The report for instance, might have focused on the way recent high profile cases involving journalists (e.g. JS Tissainayagam, Mr & Mrs Jesiharan and Nadesapillai Vidyatharan) accused under Prevention of Terrorism or Emergency Regulations charges have been subject to trial procedures which were highly irregular and subject to violations of due process including the denial of access to legal counsel, the flouting of habeas corpus and the

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[lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf](#) pp.14-18.

<sup>51</sup> TNA, *Response to the Lessons Learnt And Reconciliation Commission Report* TNA, January 2012.

<sup>52</sup> See, for instance, International Bar Association, 'Gradual erosion of judicial independence in Sri Lanka concerns IBAHRI' *International Bar Association*, 2 June 2011; 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)

widespread obtaining of confessions by torture.<sup>53</sup> Some of these cases led to conviction but the subsequent release of the convicted due to the national and international outcry caused by the injustice of the trial process and conviction.<sup>54</sup> These cases are merely the high profile end of a much more widespread problem of failures of justice and judicial process in Sri Lanka's legal system.<sup>55</sup> The COI report therefore requires a thorough overhaul of this section as it does not represent the ground reality of the current legal system.

COIS: Accepted - that revision is required.

The 'thinness' reflects a relative lack of interest in the judiciary by decision makers – receiving a fair trial is not a question we are often asked, for example.

It should also be noted that all the very useful recommended sources (of which we are aware) are now almost three years old while in most cases we aim to use sources not older than 18 months. If there are more recent sources, we would be grateful to see these.

### **10.0-10.03 Arrest and Detention – Legal Rights**

This section gives an overview of the formal legal rights that should obtain through the process of arrest and detention. However, as above, this section fails to inform the reader of the ground realities of practices rather than principle in the way that arrests and detention are carried out. As stated above torture is a pervasive element of police custody and basic safeguards including presentation before a magistrate and even access to a lawyer are routinely violated.<sup>56</sup> Human rights advocacy reports have also stated that lawyers, the police and judges are deeply inter-dependent socially, professionally and financially and this precludes the willingness of defence lawyers or judges to challenge police evidence.<sup>57</sup> Although it might be stated that these defects in the criminal justice system are primarily significant in PTA and Emergency Regulations cases, they are in fact endemic to the system as a whole, something which is recognised in the 2012 COI at paragraph 10.09 but omitted from this

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<sup>53</sup> 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) ; FFT (2011) *Out of the Silence: Ongoing Torture in Sri Lanka*, Freedom From Torture.

<sup>54</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> : pp.52-57.

<sup>55</sup> 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)

<sup>56</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)

<sup>57</sup> 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) pp.

section.<sup>58</sup> It is therefore essential that this section is expanded to show not just the legal rights framework for arrest and detention but the way in which this framework is consistently violated as a matter of routine practice.

COIS: Partially accepted.

We accept that this section needs some revision and greater linkage with other parts of the report. The aim of this section is set out what the law is with regard to arrest and detention. The application of the law in practice is set out in the subsection on human rights abuses in the Security forces section. In that section it is plain that torture, unlawful arrest, etc, are commonplace.

It may be we need to consider how these sections are constructed and linked for this report and others in future.

#### **10.04-10.15 Emergency Regulations, PTA**

This section provides a realistic and balanced picture of the way in which the draconian PTA and Emergency Regulations are implicated in the reproduction of torture, abductions, disappearances and even killings in custody and the way in which whatever safeguards exist within these regulations are routinely flouted, frequently producing lengthy internment, sometimes for over 10 years without charge. They also produce a very balanced perspective on the effect of the revocation of the Emergency Regulations, noting that many powers are already operative or have been transferred to the PTA. Again, this section is testament to the utilisation of a good range of sources.

#### **10.16-10.19 Bail/Reporting Conditions, Arrest Warrants and Court Summons**

This section is on the whole an effective overview of practices in relation to bail, court summons and arrest warrants. However, this section should explicitly state that under the PTA (and previously Emergency Regulations) arrest warrants are not issued and bail is not granted.

COIS: Accepted.

#### **11.0-11.17 Prison and Detention Centre Conditions**

This is a very effective and thorough overview of the conditions in Sri Lanka's prisons which draws from a good range of sources.

#### **11.18 Deaths in Custody**

This section should also cite or cross-reference material (in addition to Torture, Violations by Police and Armed Forces and Impunity) on the Emergency Regulations and PTA as well as Arrest and Detention as deaths in custody are inherently related to the lack and violation of safeguards for the detained in relation to standard procedures as well as the exacerbation of these failures for those detained under emergency and PTA measures.

COIS: Accepted.

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<sup>58</sup> Ibid.

### **13.0-13.13 Political Affiliation, Freedom of Political Expression, Freedom of Association and Assembly, Opposition Groups and Political Activists**

These sections provide a fairly balanced overview of political freedom in the country and the current constraints on political expression that have accompanied the rise to power of the Rajapaksa-led regime. These sections quite rightly focus on the character of the regime, the arrest, trial and detention of Sarath Fonseka and attacks on the TNA. However, there are omissions here – this section does tend to ignore attacks on and abductions of other opposition political parties, particularly the JVP.<sup>59</sup> There is also a relative neglect of the extent to which forms of dissent or political expression and assembly are being suppressed in the NorthEast of the country. This has included attempts to restrict the commemoration by the Tamil community of those who died in May 2009 and of Heroes Day in November 2011.<sup>60</sup> There have also been restrictions on university politics including attacks on student political meetings at the University of Jaffna and the attempted suppression and disruption of demonstrations and events marking international human rights day in December 2011.<sup>61</sup> The COI report therefore needs to take account of these broader restrictions on political freedom and assembly.

COIS: Accepted.

### **14.0-14.21 Freedom of Speech and Media, Legal Framework, Journalists. Internet/Mobile Phones**

Drawing from a good array of State, NGO and media sources, this section on Freedom of Speech and Media is very thorough, balanced and a good representation of the ground realities, stressing increasing control, censorship and attacks upon print and internet media. More than just passing mention should be made of the very high profile cases of Lasantha Wickrematunge, the Editor of the Sunday Leader who was assassinated in 2009 and JS Tissainayagam who was jailed on terrorism charges in 2009 and subsequently released in 2010 as they encapsulate the violence and coercion mobilised against the media and the failure of the judicial process to protect journalists.

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<sup>59</sup> Tamilnet, 'Unidentified operatives attack JVP engaged in wooing Tamil support in Jaffna', *TamilNet*, Sunday, 14 November 2010: <http://www.tamilnet.com/art.html?catid=13&artid=33014> ; Tamilnet, 'Abducted JVP organiser in Jaffna feared killed', *TamilNet*, Sunday, 11 December 2011: <http://www.tamilnet.com/art.html?catid=13&artid=34695> ; 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>60</sup> 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) ; 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>61</sup> TamilNet, 'SLA steps up harassment on University students in Jaffna', *TamilNet*, Friday, 23 December 2011 <http://www.tamilnet.com/art.html?catid=13&artid=34728> ; TamilNet, 'Abducted university student released', *TamilNet*, Wednesday, 30 November 2011: <http://www.tamilnet.com/art.html?catid=13&artid=34663> ; TamilNet, 'University student leader attacked in Jaffna', *TamilNet*, Sunday, 16 October 2011: <http://www.tamilnet.com/art.html?catid=13&artid=34526> ; 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.

COIS: Not accepted.

The cases are certainly of very high profile and significance but we consider that additional information does not provide specific added value to what is available already for decision makers. The report also concentrates on events in last 18 months (at least sources dated within the last 18 months) and these cases are two-three years old now.

However we will provide links to where information on these cases can be obtained.

#### **15.0-15.09 Human Rights Institutions, Organisations and Activists**

Drawing from a good array of State, NGO and media sources, this section on Human Rights Organisations is very thorough, balanced and a good representation of the ground realities, emphasising the way the State and its paramilitary allies have sought to coerce, discipline and filter the activities of human rights defenders through control of their activities, harassment, abduction and killings.

#### **16.0-16.05 Corruption**

Although this section does indicate that Sri Lanka suffers from corruption in both private but particularly public sectors, as with those themes and sections that are well-covered in the 2012 COI, this section needs to include more specific examples/cases of corruption to demonstrate the extent of the problem and how it is operative at high levels as this is not really captured in sources such as the Transparency International statistical indicator. Consequently, there should be more use made of media and NGO sources that focus on these issues and highlight the alarming levels of corruption.<sup>62</sup>

COIS: Not accepted.

The purpose of this section is only to provide a basic picture on the extent of corruption. We do not consider that the detail of specific cases is necessary given this.

#### **17.0-17.07 Freedom of Religion**

The extract from the US State Department's 2010 International Religious Freedom Report is at best a caricature and at worst an error as it does not capture nuanced differences in the regional make-up of religious affiliation. For instance, it is not the case that the East is predominantly Muslim as all the districts of the Eastern Province (especially Batticaloa) have sizable demographic concentrations of Tamil communities who are predominantly Hindu. Some of these districts (particularly Trincomalee and Ampara) also have sizable Sinhala populations from relatively recent settlement processes, who are predominantly Buddhist. The North is not

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<sup>62</sup> For example, Shihar Aneez , 'Sri Lanka corruption will scare investors - ex-chief justice', *Reuters*, August 17, 2011: <http://in.reuters.com/article/2011/08/16/idINIndia-58817220110816> ; Business Anti-Corruption Portal 'Sri Lanka Snapshot', Accessed 30/4/2012: <http://www.business-anti-corruption.com/country-profiles/south-asia/sri-lanka/snapshot/> ; Government Accountability Project, 'Sri Lanka Corruption', Accessed 30/4/2012: <http://www.whistleblower.org/program-areas/international-reform/sri-lanka-corruption>

“almost exclusively Hindu” (paragraph 17.01) as it has sizable Roman Catholic Tamil communities and a long-displaced Muslim community from areas such as Jaffna.

Although this section contains extracts that note the State’s privileging of Buddhism, it tends to downplay the State’s association with Buddhism and the issue of the placing and ‘discovery’ of Buddhist temples and Buddha statues in areas of Muslim and Tamil demographic concentration, a trend that accompanies demographic change and militarisation, dynamics that are perceived as a cultural threat by Sri Lanka’s minority communities. It should be noted that there is a profound link between the State and Sinhala Buddhist identity, which is not captured in this section. Political leaders in Sri Lanka regularly seek the blessing and support of members of the Sangha (monastic orders), State ministries frequently have Buddha statues in their forecourts and the State is actively involved in the promotion of Buddhism. At paragraph 17.06 it is claimed that “(i)n contrast to previous years, there were no attacks against Muslims reported,” a claim that is entirely erroneous and groundless.<sup>63</sup> Although this is after the timeline for the COI Report, it should be noted that in April 2012 a Sinhala Buddhist mob invaded the Jumma Mosque in Dambulla and attacked worshippers. The State responded by ordering the removal of the Mosque.<sup>64</sup> The coverage of Muslim religion and its diversity in Sri Lanka is also somewhat thin. The COI should therefore cite from a wider range of media, policy and NGO reports that focus on these religious issues and attempt to corroborate sweeping assertions.<sup>65</sup>

COIS: Accepted.

We will revise section for the next update. Grateful if the reviewer is able to recommend any additional sources.

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<sup>63</sup> Lanka E-News, ‘Muslims praying in mosque attacked and mosque premises damaged’, 21 May 2010: <http://www.lankaenews.com/English/news.php?id=9570> ; Tamilnet, ‘Armed men posing as police abduct Muslim trader in Colombo’, *TamilNet*, Thursday, 05 August 2010: <http://www.tamilnet.com/art.html?catid=13&artid=32347> ; Tamilnet, ‘Muslim journalist attacked for exposing corruption’, *TamilNet*, Wednesday, 09 February 2011: <http://www.tamilnet.com/art.html?catid=13&artid=33532> ;

<sup>64</sup> CPA, *Legal Note Governing the Places of Religious Worship in Sri Lanka*, CPA, April 2012: <http://www.scribd.com/doc/91824125/Legal-Framework-Governing-Places-of-Religious-Worship-in-Sri-Lanka>

<sup>65</sup> ICG *Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus*, Crisis Group Asia Report N°141 – 7 November 2007: [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/sri\\_lanka\\_sinhala\\_nationalism\\_and\\_the\\_elusive\\_southern\\_consensus.ashx](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/sri_lanka_sinhala_nationalism_and_the_elusive_southern_consensus.ashx); N DeVotta *Sinhalese Buddhist Nationalist Ideology: Implications for Politics and Conflict Resolution in Sri Lanka*, East-West Centre 2007: <http://www.eastwestcenter.org/fileadmin/stored/pdfs/ps040.pdf> ; ICG, *Sri Lanka’s Muslims: Caught in the Crossfire*, Crisis Group Asia Report N°134, 29 May 2007: [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/134\\_sri\\_lanka\\_s\\_muslims\\_caught\\_in\\_the\\_crossfire.pdf](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/134_sri_lanka_s_muslims_caught_in_the_crossfire.pdf) ; D McGilvray and M Raheem *Muslim Perspectives on the Sri Lankan Conflict* East-West Policy Study No.41, 2007: [www.eastwestcenter.org/download/3293/32213/ps041.pdf](http://www.eastwestcenter.org/download/3293/32213/ps041.pdf) ; International Crisis Group, *Sri Lanka’s Eastern Province: Land, Development, Conflict*, Crisis Group Asia Report N°159, 15 October 2008: [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/159\\_sri\\_lanka\\_s\\_eastern\\_province\\_land\\_development\\_conflict.pdf](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/159_sri_lanka_s_eastern_province_land_development_conflict.pdf) ; M.A. Sumanthiran ‘Issues and problems facing people of Northern and Eastern provinces’, *DBSJeyaraj.com*, 10 July 2010: <http://dbsjeyaraj.com/dbsj/archives/2529> ; Imaad Majeed, ‘28 Buddha statues erected along A-9 Highway since war ended in May 2009’, *Transcurrents*, 19 February 2012: <http://transcurrents.com/news-views/archives/8355>

However we do not propose to provide extensive detail in this section since it rarely, directly, arises as an issue in claims. The connection between religion and ethnicity is difficult to disentangle, particular with regard to Muslims. On this, to avoid repetition, we will cover Muslims in more detail in the section on ethnicity that follows.

### **18.0-18.19 Ethnic Groups**

The section on ethnicity provides a fair account of the profound significance of ethnicity to the intensification and recurrence of conflict in Sri Lanka and the discrimination suffered by minority groups. There are some areas for improvement. As stated in the previous section on religious issues, more detail should be provided of the relationship between Sinhala identity, Buddhism, statehood and the territorial integrity of the island as there are also a number of policy papers that deal with this issue.<sup>66</sup> As a result, there is a tendency to use sources which describe the position of the Sri Lankan Tamil community as “confrontational” whereas as the use of a fuller range of sources would contextualise this confrontation within a historical trajectory of the intensification of Tamil nationalism that is a ‘reactive’ response to the dominance of a hegemonic Sinhala nationalism which has shifted from demands for federal autonomy to demands for a separate state in the context of consistent failures in accommodating such demands. In relation to the section on Upcountry Tamils, it should be clearly stated that the population was disenfranchised by the Citizenship Acts of 1949. This information can be found in a footnote in the same MRGI report that is cited at paragraph 18.14. This section could also cite a little more detail about the kinds of poverty and disparity that this community continues to suffer. In relation to paragraph 18.17, there is a groundless claim that “there were no attacks against Muslims”. This needs to be removed as it is without foundation as stated in the commentary on Section 17.0 above and more media sources consulted to document the fact that attacks have taken place. Although this is after the timeline for the COI Report, it should be noted for the next COI report that in April 2012 a Sinhala Buddhist mob invaded the Jumma Mosque in Dambulla and attacked worshippers. The State responded by ordering the removal of the Mosque.<sup>67</sup> This section also fails to document the way that between 2006 and the present day the Muslim community have also sporadically become the target of discriminatory policies and human rights violations such as abductions.<sup>68</sup>

COIS: Accepted. We will revise this section in light of these comments.

We do not think that more detail ‘should be provided of the relationship between Sinhala identity, Buddhism, statehood and the territorial integrity of the island’ will necessarily assist decision makers in assessing asylum cases,

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<sup>66</sup> ICG *Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus*, Crisis Group Asia Report N°141 – 7 November 2007: [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/sri\\_lanka\\_sinhala\\_nationalism\\_and\\_the\\_elusive\\_southern\\_consensus.ashx](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/sri_lanka_sinhala_nationalism_and_the_elusive_southern_consensus.ashx); N DeVotta *Sinhalese Buddhist Nationalist Ideology: Implications for Politics and Conflict Resolution in Sri Lanka*, East-West Centre 2007: <http://www.eastwestcenter.org/fileadmin/stored/pdfs/ps040.pdf> ;

<sup>67</sup> CPA, *Legal Note Governing the Places of Religious Worship in Sri Lanka*, CPA, April 2012: <http://www.scribd.com/doc/91824125/Legal-Framework-Governing-Places-of-Religious-Worship-in-Sri-Lanka>

<sup>68</sup> MRG, ‘One year on: counter-terrorism sparks human rights crisis for Sri Lanka’s minorities’, *Minority Rights Group*, Briefing Note, 2007: <http://www.minorityrights.org/download.php?id=437>



for which it is unlikely to be relevant for the most part. Though some reference to this and links for further information will be made available, should further reference be needed.

We do not consider it correct to remove the USSD religious freedom report on the subject of attacks against Muslims. It is from a valid and generally reputable source – and it may not be wrong in as far as of the events that US government officials were aware, which in turn may suggest incidents are rare. The better approach, we believe, is to provide other sources which contain relevant information to provide balance so it can be compared and considered.

The issue of the April 2012 attack to the Dambulla mosque will be addressed in the next report.

At paragraph 18.05, there is an error in citation from the ICG report where the statement, “the Sinhalese are very scared of Tamils and of the LTTE” is not attributed to an interviewee but to the author of the ICG Report. This needs to be amended.

COIS: Accepted, will amend.

As a whole, this section requires further emphasis on the way that minority communities continue to be at risk of discrimination in the ‘post-conflict’ situation in relation to citizenship structures, access to administrative and governance and developmental resources. Because the GoSL continues to operate in a counter-insurgency mode, and areas such as the NorthEast are highly militarized, specific vulnerabilities in relation to the possibility of adverse attention from security forces and paramilitaries are ever-present. These risks and vulnerabilities in the contemporary period need to be more fully addressed with perhaps a sub-section on the post-2009 environment in relation to ongoing ethnic tensions and issues. The section could draw from and cite a number of recent reports that focus on these issues.<sup>69</sup>

COIS: Accepted, we will revise the section in light of comments above.

### **19.0-19.18 Lesbian, Gay, Bisexual and Transgendered Persons, Treatment and Attitudes**

This section, by drawing from a full range of media, state, human rights advocacy and NGO sources, demonstrates considerable improvement from previous COI reports in coverage of laws, issues to do with social stigma, harassment, discrimination and the practices of State agencies in relation to LGBT communities and individuals.

### **20.0-20.62 Women**

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<sup>69</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> ; 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> ; Minority Rights Group, *No war, no peace: the denial of minority rights and justice in Sri Lanka* 2011: <http://www.minorityrights.org/?lid=10458>

This section is a thorough representation of the current status and situation for women in Sri Lanka that draws from a wide range of sources and quite rightly puts due emphasis on the multiple insecurities faced by Tamil women in the North and East. One criticism is that a citation should be included in this section to clarify and expand upon the issue of the stigma of widowhood and single female householders. There is a footnote (footnote 14) in a recent ICG report which sums up the Tamil cultural aspects of this stigma succinctly.<sup>70</sup> As stated in the 2010 IAGCI review, there is also a need to recognise that these forms of stigma are not just region-specific as stated at but are prevalent in the South as well.<sup>71</sup> As stated in the 2010 IAGCI review, there is also a need, alongside the recognition of new developments, to stress some of the continuities between the pre-2009 and post-2009 period with women in the North-East having suffered from sexual harassment and violence at the hands of security forces for decades. As stated in the 2010 IAGCI Review there is also still a need to expand on the Social and Economic rights section which tend to imply, erroneously, a general picture of “gender equality” (paragraph 20.18) which is completely at odds with the circumstances of women described elsewhere in this section. The sub-section on employment could also cite statistics for female employment and unemployment.<sup>72</sup>

COIS: Accepted.

Will amend in light of the comments above. Though with the qualification that the information mentioned at footnote 70 will be included (but not the source dated 2003 mentioned at footnote 71). We believe however that information on female employment/unemployment from 2004 are dated and will look for more recent data. Does the reviewer know where these might be found?

### **21.0-21.48 Children, Education, Health and Welfare**

Again, this is a well-researched and fairly comprehensive overview of the difficulties faced by children in relation to ongoing practices of child labour and sexual violence and exploitation and the rise in the number of orphans (in a cultural milieu where orphans are also socially ostracised)<sup>73</sup> in the post-2009 period. However, this section requires further discussion of the current situation for children in the North-East and recommends citation from the ICG report on *Women's Insecurity in the North and East* (and in the South) as it documents how children are being affected by the current insecurities in the form of alcoholism, domestic and security force violence and abuse.<sup>74</sup> There are also profound concerns at teacher shortages and the short, mid and

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<sup>70</sup> 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> : p.4.

<sup>71</sup> S Thiruchandran - *The Other Victims of War: Emergence of Female Headed Households in the East of Sri Lanka* (Vikas, 1999); C Reimann - 'Why are Violent, Intra-state Conflicts Protracted? Looking at Azar's Model of Protracted Social Conflict', *Peace Studies Journal*, 2003: <http://www.peacestudiesjournal.org.uk/docs/AZAR.pdf> ; GoSL, *Sri Lanka - New Development Strategy* (Ministry of Finance and Planning, Sri Lanka, 2005); D Rajasingham-Senanayake - 'The Tragedy of Tamil Women in Conflict' in R Manchanda (ed.) - *Women, War and Peace in South Asia* (Sage, 2001).

<sup>72</sup> GoSL, *Bulletin of Labour Force Statistics* (Department of Census and Statistics, 2004).

<sup>73</sup> S Thiruchandran - *The Other Victims of War: Emergence of Female Headed Households in the East of Sri Lanka* (Vikas, 1999), pp.90-91.

<sup>74</sup> 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>

long-term potential for the UN and GoSL's 2011 Joint Plan of Assistance for the North, which is severely under-funded, to improve the situation for health and education in the North in a context where the State appears to be more concerned with expanding budgetary expenditure on the military.<sup>75</sup> Therefore, as a whole this section needs to take more account of the current situation in the NorthEast. This could be done by a better balance between State sources on the one hand, including the BHC correspondence which tends to rely on interviews and information gleaned from State officials, and human rights advocacy reports on the other which present a more critical analysis of the on-the-ground situation.

COIS: Accepted. We will revise in light of the above.

### 22.0-22.05 Trafficking

On the whole the section on Trafficking is clear and without major problems. Again, there could be some cross-referencing and citation of the ICG report on *Women's Insecurity in the North and East* as it has a specific section devoted to how the current situation on the North and East meshes with dynamics of trafficking and prostitution.<sup>76</sup>

COIS. Accepted.

### 23.0-23.10 Medical Issues

On the whole this section gives a reasonable overview of access to pharmaceuticals, healthcare and treatment. It also makes note of the severe disparities in provision for the NorthEast, beset as these districts are by a lack of health infrastructure and a severe shortage of medical staff.<sup>77</sup> However, this section again needs to take into account of the way that the GoSL and UN's Joint Plan of Action for the North and East has left populations who are in dire need without adequate medical and health provision with little prospect that this will be overcome in the near-to-mid term.<sup>78</sup> This is reinforced by recent human rights advocacy reports which stress that by mid-2011 only "2 per cent of health and nutrition, and 1 per cent of water and sanitation requirements had been met", a situation which had not changed significantly by the end of the year, leaving one humanitarian worker to describe the effort as 'one of the poorest responses to a UN humanitarian appeal anywhere in the world. It's the second worst in Asia, second only to North Korea'.<sup>79</sup> Again, as a whole this section needs to

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[lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf](#)

<sup>75</sup> 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> : p.23.

<sup>76</sup> Ibid.: pp.28-9.

<sup>77</sup> OCHA, "Joint humanitarian and early recovery update", September 2011 – Report #36: [http://reliefweb.int/sites/reliefweb.int/files/resources/LKRN055\\_JHERU\\_Sep\\_2011\\_DRAFT\\_4-final.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/LKRN055_JHERU_Sep_2011_DRAFT_4-final.pdf) : p.8.

<sup>78</sup> 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> : p.23.

<sup>79</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.

take more account of the current situation in the NorthEast and the lack of prospects for amelioration of the profound disparities which have fuelled the conflict in the past. This could be done by a better balance between State sources on the one hand, including the BHC correspondence which tends to rely on interviews and information gleaned from State officials, and human rights advocacy reports which present a more critical analysis of the on-the-ground situation.

COIS: Accepted.

Though this needs to be qualified that the legal issue for human rights claims is availability of healthcare. So while accessibility is a factor in consideration of claims in the round, ultimately it is whether healthcare exists, not where it is exists that is significant. In this case, regional disparities are arguably less relevant.

It would be helpful if additional sources could be provided

### **23.11-23.20 HIV/AIDS**

Although this section notes correctly that current rates of HIV/Aids are low, it could also take note of a recent report which indicates how the aforementioned explosion of prostitution as a result of militarisation and conflict when linked in with a lack of sex education and existing sexual practices, may produce a potential HIV/AIDS epidemic in the future.<sup>80</sup>

COIS. Partially accepted.

Interesting information but we consider the section should focus on available treatment. We will provide a link to the source since it provides useful information on HIV/AIDS generally in Sri Lanka.

### **23.21-23.30 Mental Health**

This section produces a particularly unbalanced representation of the mental health provision in Sri Lanka, reliant as much of it is on technocratic sources such as the WHO, State sources such as the Daily News (at paragraph 23.22) and the testimony of a Consultant psychiatrist to the BHC (at paragraph 23.25 and 23.29). This produces citations such as “Sri Lanka’s progress in the mental health sector is commendable and Sri Lanka has achieved a significant improvement in human resources development and an expansion of resources and facilities” (paragraph 23.22). Such statements are completely at odds with the representation of mental health provision provided by human rights advocacy organisations such as the International Crisis Group who have instead stressed the way in which, despite massive percentages of the population in the North suffering from Post-Traumatic Stress Disorder, depression and anxiety that are the legacy of both decades of conflict as well as the final phase of the war, psycho-social and psychological programming and support are “far from adequate”. Indeed, this same report indicates that between 2009 and 2011 the Presidential Task Force denied INGOs and NGOs access in order to carry out such

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<sup>80</sup> ICES, *A Survey of HIV/AIDS Awareness and Risky Sexual Behaviour in a Vulnerable Population in Sri Lanka*, International Centre for Ethnic Studies (ICES), ASCI Research Report no. 22, January 2009: <http://asci.researchhub.ssrc.org/working-papers/ASCI%20Research%20Paper%2022-ICES.pdf>

services.<sup>81</sup> Given the prognosis for the health sector in this area<sup>82</sup> and the fact that a recent Ministry and Health and WHO programme has only just commenced implementation,<sup>83</sup> it is highly likely that mental health provision will remain extremely uneven, limited and incomplete in spread, particularly in areas that have been severely affected by the recent conflict and displacement. Once again, this section needs to take more account of the current situation in the NorthEast than is apparent in the very thin commentary at paragraph 23.24. This could be done by a better balance between State sources on the one hand, including the State-run Daily News and BHC correspondence which tend towards a picture of rapid improvement, and human rights advocacy reports on the other which present a more critical analysis of the on-the-ground situation.

COIS: Partially accepted.

We disagree that this section “produces a particularly unbalanced representation of the mental health provision in Sri Lanka”. The information provided by the BHC Colombo is factual and does not lean “towards a picture of rapid improvement”. It is very clear from the entire section that there are serious problems and limitations.

Information from the suggested IGC reports will be included together with any other sources which can contribute to a broader picture with specific regards to the situation in the north.

#### **24.0-24.21 Humanitarian Issues and IDPs, Documentation**

This section relies too frequently on GoSL and BHC correspondence sources. As a result the overall picture of the situation and even statistical profiles of internal displacement in 2011 is unbalanced when compared to human rights advocacy accounts of the same period and processes. For instance in 2011 to 2012, the GoSL made claims as to the total number of displaced that tended to under-estimate the number still displaced, especially from the Mullaitivu District where returns and resettlement was still heavily restricted. More attention should also be given to the issue of long-term Muslim IDPs which is only very briefly mentioned (at paragraph 24.02). This section also fails to sufficiently deal with the issue of the restriction and securitised control of humanitarian access in many areas of the North. There is also a lack of focus on the range of obstacles and constraints faced by returnees and those displaced in the form of lack of infrastructure, livelihood opportunities and food insecurity. The issue of the lack of documentation amongst some displaced and returnee households is not sufficiently addressed (either here or in the cross-referenced section at paragraphs 26.06 to 26.11) particularly with reference to the negative implications for their access to compensation and other social and welfare goods and assistance. Consequently, this section needs to cite more information from

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<sup>81</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](http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.pdf) : p.12.

<sup>82</sup> 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> : p.23.

<sup>83</sup> World Health Organisation, ‘Mental Health Update’, *WHO Sri Lanka Country Office*, June 2008: [http://www.whosrilanka.org/LinkFiles/WHO\\_Sri\\_Lanka\\_Home\\_Page\\_Mental\\_Health\\_Factsheet.pdf](http://www.whosrilanka.org/LinkFiles/WHO_Sri_Lanka_Home_Page_Mental_Health_Factsheet.pdf)

human rights advocacy sources that provide more detailed information on numbers and the conditions and experiences of IDPs and returnees.<sup>84</sup>

COIS: Accepted. We will revise this section in light of comments above.

### **25.0-25.24 Freedom of Movement**

This section provides a reasonable overview of the restrictions on freedom of movement and forms of surveillance used by the Sri Lankan State, the way in which Police registration has been specifically targeted against Tamils and the current situation for checkpoints in the country. It should also be noted in this section that there are continuing reports from Tamil news sources of cordon and search operations and arrests in large numbers focused upon the Tamil community.<sup>85</sup> It would therefore be advisable for the COI to extend its citation of sources such as Tamilnet which regularly publishes accounts of such police operations when they occur.

COIS: Accepted but it would be useful if – in addition to TamilNet of which we are aware and have quoted in the report – the reviewer could identify what additional sources he means.

### **25.25-25.28 Returns of Refugees from India**

Although this section provides reasonable coverage of the issue of returns from India, it could provide a little more detail about their current situation and conditions in India and concerns that some human rights advocates have raised about the

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<sup>84</sup> See Minority Rights Group, *No war, no peace: the denial of minority rights and justice in Sri Lanka* 2011: <http://www.minorityrights.org/?lid=10458> ; UNHCR, ‘Sri Lankan refugee return figures fall in 2011, amidst suspension of ferry service’, UNHCR press release, 6 January 2012; 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> ; Minority Rights Group, *No war, no peace: the denial of minority rights and justice in Sri Lanka* 2011: <http://www.minorityrights.org/?lid=10458> ; International Crisis Group, *Sri Lanka: A Bitter Peace*, Crisis Group 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> ; 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, *Reconciliation in Sri Lanka: Harder than Ever*, Crisis Group Asia Report N°209, July 2011: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/209%20Reconciliation%20in%20Sri%20Lanka%20-%20Harder%20than%20Ever.pdf> ; 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>

<sup>85</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>

politicisation and lack of transparency about the return process for Sri Lankan Tamil refugees.<sup>86</sup> This would provide a thicker description of the processes surrounding return from India.

COIS: Accepted.

#### **25.29-25.55 Returned Failed Asylum Seekers, Physical Examinations/Scarring:**

This section covers sources of diverging views on the question of whether failed asylum seekers returned to Sri Lanka are safe and as a result does produce a relatively balanced (although irreconcilable) set of perspectives. My own view is that the human rights advocates' concerns (as contained in the citations from FFT and the IRB sources) at the risk inherent to deportations should be placed before DIE, FCO, BHC and Danish FFM sources as the latter sources produce perspectives which arise from visits to Airport Security, Intelligence and Immigration facilities and agencies which cannot encompass processes and procedures that occur when such visitors are not present or occur after departure from the Airport processing zones. There are also a host of current and past sources that indicate that Sri Lankan security forces have a long history of subjecting returned asylum seekers, especially from the Tamil community, to interrogation, abuse and torture. Such a picture would be in keeping with Sri Lanka's general record of institutionalised torture and impunity. In this regard, I also feel that some further sourcing of Amnesty International and Human Rights Watch responses to this issue would enhance balance.<sup>87</sup> As a final comment, although it is beyond the timeline of this COI, it should be noted that reports claim that one of the recently deported Tamil failed asylum-seekers was killed in Trincomalee.<sup>88</sup>

COIS: Not accepted.

We note that the reviewer seems to broadly accept that we have included a wide and balanced range of sources on the subject, and have quoted appropriately from these sources. The ordering reflects the process of return running from documentation, actual return to allegations of ill-treatment subsequent to return, and therefore has a reasonably clear logic which we are inclined to maintain. To this extent, the IRB response may be placed higher up in the section but we felt it better to quote it in its entirety, and so placed it at the end since it covers a number of points. But there is no attempt to create or suggest there is a hierarchy of or to prioritise sources.

We will consider adding further material from other NGOs where information is available and relevant. The HRW report referred in the footnote 87 was published after the date of the narrative cut-off so couldn't be included in this section, but does appear in the Latest News.

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<sup>86</sup> ICG, *India and Sri Lanka after the LTTE*, Crisis Group Asia Report N°206, 23 June 2011: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/206%20India%20and%20Sri%20Lanka%20after%20the%20LTTE.pdf> :pp.32-35.

<sup>87</sup> E.g. HRW, 'UK: Halt Deportations of Tamils to Sri Lanka: Credible Allegations of Arrest and Torture upon Return', February 25, 2012: <http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka>

<sup>88</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>

## CONCLUSION

This review has sought to evaluate the current 2012 UKBA COI Report on Sri Lanka. A number of key points stand out. Firstly, it should be noted that, broadly speaking, the 2012 COI Report develops an overall representation of the situation in Sri Lanka, which captures the contemporary context of instability, risk and widespread human rights violations despite the ‘post-conflict’ environment in the island. Secondly, the 2012 COI has produced a number of sections, which produce a thorough, comprehensive and sometimes detailed assessment in relation to specific themes and processes through coverage of a broad range of sources encompassing media, state and non-governmental sources. Thirdly, it has also been noted that there are still some sections where there is over-reliance on some, particularly state, sources or the privileging of state sources through their prioritisation in the ordering of particular sections. Fourthly, that there is still a tendency in some sections to neglect either local and Diaspora news media sources (which as a whole are still relatively under-utilised) on the one hand and/or non-governmental reports which provide thicker description and detail. The under-utilisation of a diversity of sources is reproductive of, *inter alia*, error and misrepresentation, a lack of balance, bias arising from the self-interest of the narrow sources used and/or a lack of depth and/or detail necessary to capture the current realities of the on-the-ground situation on Sri Lanka.

COIS: Thank you for the positive comments in your first two points.

We, however, do not accept your third point that there is ‘privileging’ or prioritisation of sources – which seems mainly to apply to the section on the return of failed asylum seekers. There was no intention to privilege “state sources through their prioritisation in the ordering of particular sections...” nor do we believe that this is the outcome of this section, rather its order follows a description of the process of return. No extra weight is given to any particular source, and sources are quoted at length where information is relevant.

Nor were there attempts were made to establish a hierarchy of sources. Sources may appear to be in a hierarchy because of the flow of information from general to specific. Additionally, some sources, such as the US State Department and FCO reports, are useful at summarising situations and are good to start a section as overviews which may mean they appear earlier in a section. However, there is no intention to suggest that one source should be given more weight than another: the report taken at its simplest level is a database of un-weighted information sources.

In regard to your last point, using local and Diaspora news media sources, we are open to additional suggestions (it would be helpful if the reviewer is able to suggest more sources to complement those already provided) and will look to diversify sources used in future reports.

We also wish to add that the issue of ‘depth and / or necessary detail’ in sections is something we have not always agreed with the reviewer. This in part reflects different views on the purpose of the report and the needs of users. Our general view is to provide briefer narrative than is the reviewer’s preference in sections that provide political context for users and focus on human rights in practice in the present.



## RECOMMENDATIONS

- Diversify the range and sort of sources utilised in the report, encompassing foreign, Diaspora and local news media, state and non-governmental sources throughout all the sections, where this is possible
- Use a diversity of sources in order to corroborate claims and representations about the country situation, themes and processes in order to avoid error and misrepresentation and to editorially check for the reliability and quality of particular sources
- Use a diversity of sources in order to provide detailed and in-depth understanding of the different aspects and themes relevant to the country situation so that the context is adequately represented and conforms to the on-the-ground reality
- Ensure that the structuring and layout of the report does not reproduce the hierarchic privileging of one category of sources or viewpoints over another

COIS: We will continue to seek diversify sources further and providing information of sufficient detail to assist decision makers. It is worth noting that COI Service has a bespoke information request service, providing bespoke responses which complement information provided in the report, providing further detail if required.

We will be mindful of not creating hierarchies of sources.

Thank you for your comments, suggested sources and recommendations.