



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/12647/2011
AA/03791/2011
AA/02916/2009

THE IMMIGRATION ACTS

Heard at Field House
On 5 - 8 and 11-12 February 2013,
15 March 2013 and 19 April 2013.

Determination Promulgated

.....

Before

UPPER TRIBUNAL JUDGE GLEESON
UPPER TRIBUNAL JUDGE DAWSON
UPPER TRIBUNAL JUDGE O'CONNOR

Between

GJ
NT
MP

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

TAMILS AGAINST GENOCIDE

Interested Party

Representation:

- For the First Appellant : Miss Shivani Jegarajah and Mr Iain Palmer, instructed by Patricks solicitors.
- For the Second Appellant: Mr Rudolph Spurling and Miss Sara Anzani, instructed by Dean Manson Solicitors
- For the Third Appellant: Mr Alasdair Mackenzie and Miss Alison Pickup, instructed by Birnberg Peirce & Partners, solicitors
- For the Interested Party: Miss Shivani Jegarajah and Mr Colin Yeo instructed by Duncan Lewis, solicitors
- For the Respondent: Mr Jonathan Hall and Mr William Hays, instructed by The Treasury Solicitor

DETERMINATION AND REASONS

1. The first appellant appeals against a decision to refuse him leave to enter the United Kingdom. The second and third appellants appeal against decisions of the Secretary of State to remove them to Sri Lanka. Each appellant appeals on Refugee Convention, humanitarian protection and human rights grounds. This determination is one to which all three members of the panel have contributed.
2. The changes which have taken place in Sri Lanka since the end of the civil war in May 2009 are complex. We have had access to a wide range of oral and written documents and expertise to assist us in re-assessing who is at risk today if returned to Sri Lanka. We have had the advantage of hearing from many highly qualified witnesses with knowledge of circumstances in Sri Lanka now and of events since May 2009, and of receiving over 5000 pages of documentary evidence, in written and electronic form.
3. We would like to record our gratitude to counsel, to those instructing them, and to the expert and country witnesses, for the research they carried out, for full and helpful submissions, and for their help in assembling the evidence to enable the Tribunal to give new country guidance on Sri Lanka. The present determination is necessarily a long one, but we have sought to maintain clarity by dealing with certain parts of the evidence more fully in appendices and summarising it in the main body of the determination.
4. In view of the length and perceived significance of this decision, at our request, all of the Counsel in the appeal considered the final draft (under embargo) before it was published and made helpful suggestions in relation to typing corrections and other obvious errors. They were also asked to indicate any anonymity concerns in the determination as drafted: no such concerns were raised.
5. The appeals were identified as suitable for country guidance in relation to the present situation in Sri Lanka. The most recent Sri Lanka country guidance is that of

the Asylum and Immigration Tribunal in *TK (Tamils, LP updated) Sri Lanka CG* [2009] UKAIT 00049 based on materials up to and including 26 October 2009, just five months after the civil war ended in May 2009. The guidance in *TK* updated and incorporated country guidance given by the AIT in *LP (LTTE area – Tamils – Colombo – risk?) Sri Lanka CG* [2007] UKAIT 00076 and approved by the European Court of Human Rights (ECtHR) in *NA v UK*, No 25904/07 [2011] ECHR 1272, and more recently in *E.G. v. The United Kingdom* - 41178/08 [2011] ECHR 846.

6. The civil war in Sri Lanka ended on 19 May 2009 after more than 25 years of conflict, involving tens of thousands of deaths and casualties and serious damage to the infrastructure in the Northern and Eastern Provinces, where the conflict was most fierce. At the end of the civil war, about 160,000 Tamils were unaccounted for, but as in any conflict zone, there are real difficulties in establishing how reliable any such statistics may be. The LTTE within Sri Lanka is a spent force and the government has full control over the whole of Sri Lanka.
7. The evidence before us indicates that the Sri Lankan government is determined to ensure that Tamil separatism and the conflict it brought never recur. The government's intention is being carried into effect by an intensive militarisation and Sinhalisation of former Tamil areas, "rehabilitation" of 11,000 former LTTE cadres, and intelligence-led monitoring and supervision of Tamil activities, both within Sri Lanka and in the diaspora.

The appellants

8. The three appellants are Tamils, all with LTTE links. Their names are anonymised in this determination.
 1. The basis of the first appellant's account is that he came from a family of LTTE loyalists; his sister was a member of the Movement's inner circle, acting as medical adviser to its late leader, Thiruvenskadam Velupillai Prabhakaran, whose death on 18 May 2009 ended the civil war. The appellant was recruited in May 2007 and served until the end of the civil war. He was detained twice, once as a civilian, and the second time, because of his family connections. He has torture scars.
 2. The basis of the second appellant's account is that he came originally from Jaffna but was relocated to Puthukudyiruppu where he worked for the LTTE on the Pallai checkpoint for two years. He returned home after the ceasefire and was re-recruited in 2008, bunker digging and transporting the wounded. He surrendered at the end of the civil war in May 2009 and was detained for three months, during which he was tortured. He reached the United Kingdom in 2010.
 3. The basis on which the third appellant puts his claim is that he was involved with the LTTE between 1995-1997. He was detained and tortured in 2001-2 but released from detention in 2002 after the ceasefire, and came to the United Kingdom in 2005. His brother is also in the United Kingdom and has been granted asylum on appeal.

9. The paragraph numbers where certain elements of this determination may be found are as follows:

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Glossary

10. The following standard abbreviations are used in this determination:

<u>Abbreviation</u>	<u>Full name</u>
BHC	British High Commission
CHOGM	Commonwealth Heads of Government Meeting
CID	Criminal Investigation Department
CSLT	Country Specific Litigation Team
DIE	Department of Immigration and Emigration (Colombo)
Diaspora hotspot	London, Paris, Toronto and Oslo, the main centres of activity for the Tamil diaspora worldwide. ¹
Diaspora activities	Demonstrations, fundraising, and other activities carried out in the

¹ There are approximately 1 million Tamils outside Sri Lanka, most of whom are in the four hotspots.

² All Tamil spellings may vary as they are transliterated from Tamil script.

³ Sometimes also rendered as ‘Mahabrwa’. ‘Mahaveera’ is the transliteration used in this determination.

diaspora hotspots, in support of Tamil separatism and the resurgence of the LTTE or similar militia.

ECHR	European Convention on Human Rights and Fundamental Freedoms
EPDP	Eelam People's Democratic Party
ETD	Emergency Travel Document
FFT	Freedom from Torture (formerly the Medical Foundation)
GOSL	Government of Sri Lanka
HRW	Human Rights Watch
HSZ	High Security Zone
IAGCI	Independent Advisory Group on Country Information
IOM	International Organization for Migration
LLRC	Lessons Learned and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
MDO	Migration Delivery Officer (BHC Colombo)
MEA	Ministry of External Affairs (Colombo)
MLR	Medico legal report
MSO	Migration Support Officer (BHC Colombo)
NGO	Non-governmental organisation
NFZ	No-fire zone
PLOTE	People's Liberation Organization of Tamil Eelam
PTA	Prevention of Terrorism Act (as amended)
SLHC	Sri Lankan High Commission
SIS	State Intelligence Service
"stop" list	Computerised list of those against whom there is an extant Court order, arrest warrant or order to impound their Sri Lankan passport. Accessible at the airport.
TAG	Tamils against Genocide
TamilNet	www.tamilnet.com : A Tamil news and feature service that aims to provide reliable and accurate information on issues concerning the

	Tamil people in Sri Lanka.
TGTE	Transnational Government of Tamil Eelam
TNA	Tamil National Alliance – a breakaway from TNPF launched on 28 February 2010.
TNPF	Tamil National People’s Front – a Tamil political alliance
TTD	Temporary Travel Document. ETDs in Sri Lanka have been replaced by TTDs, presumably under the Readmission Agreement. Reference in this determination to a TTD includes ETDs before the change of nomenclature.
TULF	Tamil United Liberation Front
UKBA	United Kingdom Border Agency
UNCAT	UN Committee Against Torture
UNHCR	United Nations High Commissioner for Refugees
“watch” list	A computerised list of those whom the Sri Lankan security services consider of interest, whether for separatist or criminal activities. Accessible at the airport.

Tamil Celebrations

11. The evidence indicates that the following celebrations, held every year, are specific to the Tamil community and that many Tamils may wish to participate in celebrating them, both within Sri Lanka and in the diaspora:

<u>Tamil name²</u>	<u>Translation</u>	<u>When celebrated</u>
Maaveerar Naal	<i>Heroes Day</i>	27 November annually (the day following the birthday of the late LTTE founder and leader Thiruvankadam Velupillai Prabhakaran (‘Prabhakaran’)
Pongu Thamil:	<i>Tamil Uprising/ Tamil Upsurge</i>	Dates vary. Commemorates a series of spontaneous demonstrations in the 1990s and during the peace process years.
Mahaveera³	<i>Martyrs Day</i>	18 May 2010 and thereafter, marking the anniversary of the end of the civil war in Sri Lanka on 18 May 2009

Evidence before the Upper Tribunal

12. The hearing of these appeals took place over nine days between 5 February and 19 April 2013 (excluding Case Management Review hearings which guided the preparation of the case between September 2012 and the full hearings). TAG sought

² All Tamil spellings may vary as they are transliterated from Tamil script.

³ Sometimes also rendered as ‘Mahabrwra’. ‘Mahaveera’ is the transliteration used in this determination.

and was granted leave to intervene on behalf of issues concerning the Tamil diaspora in general. We are indebted to TAG for making available additional experts, evidence and argument which would not otherwise have been before us.

13. All parties, including TAG, made extensive written submissions before, during and after the main hearing, as well as oral submissions at the end of the case.
14. We received approximately 5000 pages of documentary evidence. We had the benefit of oral evidence from seventeen expert and country witnesses, including three witnesses for the respondent with detailed knowledge regarding the preparation of Operational Guidance Notes and Country of Origin Reports, and of entry procedures at Bandaranaike Airport, Colombo. Four more experts gave evidence by witness statement or report but were not available for cross-examination.
15. We also heard from two of the appellants to clarify matters which had arisen after their original evidence was given to the First-tier Tribunal. The evidence is dealt with when we consider each of the appellant's particular circumstances at the end of this determination. The third appellant was not called: medical evidence indicated that he might not be fit to testify and his representatives elected not to risk any further harm to his mental state.
16. The witness evidence and other relevant information are set out in a series of appendices to this determination. For ease of reference, those appendices and the material they contain are as follows:

Appendix Evidence

- A Documents before Upper Tribunal
- B Agreed issues
- C *UKBA:*
Mr Malcolm Lewis
Mr Mike Gallagher
Mr Jonathan Wright
Mrs Anita Athi-Parkin (witness statement)
- D *IAGCI*
Dr David Rampton
- E *Freedom from Torture:*
Professor Sir Nigel Rodley
Ms Jo Pettitt
- F *Human Rights Watch:*
Mr Brad Adams
Ms Charu Lata Hogg

- G** *Tamils Against Genocide:*
Ms Jan Jananayagam
Mr Alan Keenan
- H** *Outsider TV*
Callum Macrae
- I** Professor Anthony Good
- J** Dr Chris Smith
- K** *Other country witnesses:*
Dr Rohan Gunaratna
Mr Paikaisothy Saravanamuttu
Mr P Anton Punethanayagam
Dr Suthaharan Nadarajah
- L** Press reports
- M** Tabular analysis of material from unreported Tribunal determinations submitted by TAG and third appellant

17. We have had regard to all of the material before us, written and oral. We mean no disrespect to the parties, all of whom put in a great deal of work to assist the Upper Tribunal in understanding the present situation in Sri Lanka, when we say that we do not intend to set it out *in extenso* in this determination.

Procedural issues

18. There were a number of procedural issues during the hearing, most of which concerned the admissibility or disclosure of certain evidence. A good deal of evidence was served late, including during the hearing. In most cases, the late service did not cause any lasting difficulty and requires no comment now. There are three procedural issues which do require analysis in this determination.

Unrelated Tribunal determinations

19. The parties, and in particular TAG, had obtained copies of 52 positive asylum determinations (mostly First-tier Tribunal determinations, but including some unreported Upper Tribunal decisions and four positive decisions by the respondent at first instance) in which the accounts of Sri Lankan appellants had been found credible and their appeals allowed. The appellants in those cases all stated that they had been tortured after returning to Sri Lanka. In 16 of the determinations relied upon, the respondent was not represented, such that the appellant's account was untested by cross-examination. All of the determinations were unchallenged by any onward appeal. The determinations were unreported and the appellants concerned were not contacted to seek consent for the use of their personal information.

20. We received oral and written submissions from all parties (including TAG) on the admissibility of these determinations and the weight which we should give to them, if admitted.
21. For the respondent, Mr Hall argued, first, that it is a general principle of civil litigation that previous findings of fact do not set precedents for later cases between different parties (see paragraph 64 of *AA(Somalia) and AH (Iran) v Secretary of State for the Home Department* [2007] EWCA Civ 1040), and second, that the general principle is maintained in immigration appeals save (a) on the basis identified in the IAT's starred decision in *Devaseelan* [2002] UKIAT 000702*, where there is a familial link between the appellants in each determination, or (b) in narrow circumstances set out in the judgment of Lord Justice Carnwath (as he then was) in *AA (Somalia)* at paragraphs 69-70 thereof:

"69. ... exceptions to the ordinary principle that factual decisions do not set precedents (see above) should be closely defined. To extend the principle to cases where there is no more than an "overlap of evidence" would be too wide, and could introduce undesirable uncertainty. In all the cases in which the principle has been applied so far, including *Ocampo*, the claims have not merely involved overlapping evidence, but have arisen out of the same factual matrix, such as the same relationship or the same event or series of events. I would respectfully read Auld LJ's reference to "cases such as the present" as limiting the principle to such cases.

70. Secondly, in applying the guidelines to cases involving different claimants, there may be a valid distinction depending on whether the previous decision was in favour of or against the Secretary of State. The difference is that the Secretary of State was a direct party to the first decision, whereas the claimant was not. It is one thing to restrict a party from re-litigating the same issue, but another to impose the same restriction on someone who, although involved in the previous case, perhaps as a witness, was not formally a party. This is particularly relevant to the Tribunal's comments, in *Devaseelan*, on what might be "good reasons" for reopening the first decision. It suggested that such cases would be rare. It referred, for example, to the "increasing tendency" to blame representatives for unfavourable decisions by Adjudicators, commenting:

"An Adjudicator should be very slow to conclude that an appeal before another Adjudicator has been materially affected by a representative's error or incompetence..."

I understand the force of those comments where the second appeal is by the same claimant, but less so where it is by a different party, even if closely connected. Although I would not exclude the *Devaseelan* principles in such cases (for example, the hypothetical series of cases involving the same family, cited in *TK*), the second Tribunal may be more readily persuaded that there is "good reason" to revisit the earlier decision."

22. Mr Hall's third point was that the judges in these determinations were not making factual findings for wider use; the fourth point was that it was impermissible to aggregate individual findings in order to demonstrate a general factual probability. His final point is that these determinations were made based on country guidance

which is to be reconsidered in the present determination and which we may need to modify.

23. The appellants' arguments in their closing submissions on admissibility are based on *CM (EM country guidance; disclosure) Zimbabwe* CG [2013] UKUT 59 (IAC) which sets out the flexibility available to the Upper Tribunal in receiving relevant information, and *TK (Consideration of Prior Determination – Directions) Georgia* [2004] UKIAT 00149, which was taken into account by Carnwath LJ in reaching his conclusions in *AA (Somalia)* and therefore is not in conflict with the guidance there given.
24. We were referred to the Senior President's Practice Direction of 15 February 2010, given by Lord Justice Carnwath (as he then was) as Senior President of Tribunals. The relevant guidance is at paragraph 11:

"11 Citation of unreported determinations

11.1 A determination of the Tribunal which has not been reported may not be cited in proceedings before the Tribunal unless:-

- (a) the person who is or was the appellant before the First-tier Tribunal, or a member of that person's family, was a party to the proceedings in which the previous determination was issued; or
- (b) the Tribunal gives permission. ...

11.3 Permission under paragraph 11.1 will be given only where the Tribunal considers that it would be materially assisted by citation of the determination, as distinct from the adoption in argument of the reasoning to be found in the determination. Such instances are likely to be rare; in particular, in the case of determinations which were unreportable (see Practice Statement 11 (reporting of determinations)). It should be emphasised that the Tribunal will not exclude good arguments from consideration but it will be rare for such an argument to be capable of being made only by reference to an unreported determination. ..."

25. It is not suggested that the determinations now sought to be adduced fall within 11.1(a). The question is the exercise of our discretion under paragraph 11.1(b) to admit these determinations, which we do by reference to the guidance in *AA (Somalia)*, which is binding upon us. We are conscious that these are asylum appeals and that anxious scrutiny of all relevant material is required. Anxious scrutiny is the more relevant in country guidance analysis to ensure that we have as broad a picture as possible of the current situation in Sri Lanka. However, we find nothing in the appellants' arguments which inclines or entitles us to depart from the guidance of the Court of Appeal in *AA (Somalia)*. We are not persuaded that these documents should be admitted; they do not come within the range of documents contemplated as likely to be admitted in that judgment.
26. Even if we were to admit these determinations, the weight we could give to them is constrained by a number of factors. First, these determinations are relied upon for their factual findings rather than their legal analysis, which would be based on the country guidance at the time, which we review in the present determination, in the light of the evidence now before us as to the post-conflict situation in Sri Lanka.

Second, just under a third of these determinations reflect hearings where the Secretary of State was not represented and in which the appellant's evidence was untested by cross-examination; and in many cases, as Ms Jegarajah told us, the factual matrices relied upon are insufficiently developed because of the course which the arguments took before an individual judge.

27. At the end of the hearing, we were presented with a tabular analysis prepared by Mr Hays on behalf of the respondent and annotated on behalf of the third appellant by Ms Pickup, setting out the facts relied upon in the unreported determinations. In his submissions, Mr Hall accepted the accuracy of the information added by Ms Pickup's annotations. Given that the contents of the tabular analysis are not in dispute, we have had regard to the information there summarised⁴.
28. The weight that we give to this evidence is shaped by our conclusion that the underlying determinations are not admissible. At best this data is reliable as evidence that a number of appeals by Sri Lankan nationals have been allowed in the light of country guidance which we are reconsidering.
29. The fact of the appeals having been allowed indicates that certain past ill-treatment by the Sri Lankan authorities was accepted by Tribunal judges in individual cases. The data is part of a wide range of evidence that we have heard and read; this assists us in examining the situation today. However, had there been any dispute as to the contents of the tabular analysis, we would have excluded it for the same reasons as we have excluded the determinations from which that material was drawn.

The respondent's duty of disclosure

30. On 31 January 2013, just before these hearings, the Upper Tribunal promulgated a guidance decision on the respondent's duty of disclosure in *CM (EM country guidance; disclosure) Zimbabwe* CG [2013] UKUT 59 (IAC), which set out the respondent's duty to furnish information within her possession or control in proceedings before us. The material paragraph of the judicial headnote is paragraph (1):

(1) There is no general duty of disclosure on the Secretary of State in asylum appeals generally or Country Guidance cases in particular. The extent of the Secretary of State's obligation is set out in R v SSHD ex p Kerrouche No 1 [1997] Imm AR 610, as explained in R (ota Cindo) v IAT [2002] EWHC 246 (Admin); namely, that she must not knowingly mislead a court or Tribunal by omission of material that was known or ought to have been known to her.

31. Two disclosure issues arose thereunder.
 - i. We were made aware, during the evidence of the UKBA witnesses, of the existence of a Bilateral Readmission Agreement between the United Kingdom and Sri Lanka. The respondent refused to disclose a copy of that agreement, but

⁴ See Appendix M for the tabular analysis

we consider that we are able to deduce its relevant contents sufficiently from the procedures adopted. No disclosure order was made for this document.

ii. The appellants sought disclosure of information in the possession or control of the respondent regarding their contention that there was a significant trend in 2011-2012 of students with multiple entry visas, returning to Sri Lanka and coming to harm there, and then seeking asylum in the United Kingdom (the "recent returnees" profile). They had been endeavouring to obtain information from the respondent about cases in her database fitting the "recent returnees" profile.

32. In the light of the *CM* guidance, the respondent accepted that she had a duty to make enquiries to enable her to assist the Tribunal, stating that the information was not retained on her database in the form sought. It was not possible for her to comply with a request to analyse the record of all individuals on multiple entry visas who had returned and made asylum applications, since no adequate computerised records of departures and returns on multiple entry visas is maintained.

33. The original requests were impermissibly wide but they were refined at the hearing, after discussions between the parties and the Tribunal. The agreed version of the disclosure order, made with reference to an earlier Note on Disclosure by the respondent, was as follows:

"2. In respect of the enquiries undertaken by the Respondent pursuant to paragraph 23 of her note on Disclosure of 10 December 2012, the Respondent shall ... provide in writing to the Tribunal and the parties:

- a. The wording of all questions asked of the Asylum Regional Offices;
- b. What, if any, information was given in response by each office to each question.

3. The Respondent shall...provide to the parties and the Upper Tribunal the number of Sri Lankan nationals who were granted refugee status in the period 1 October 2012 to 31 December 2012 who had previously been removed, including the number of cases in which there was an allegation of torture following return to Sri Lanka.

4. The Respondent shall confirm ... whether she accepts that there is a pattern of persons with lawful residence in the United Kingdom returning to Sri Lanka and being detained and tortured in Sri Lanka after return, and thereafter being granted asylum (whether in response to an initial claim or following an appeal)."

34. The respondent made enquiries of her ten regional asylum casework centres and also provided some statistical information. Six regions made partial replies, albeit statistically inadequate and largely anecdotal. The remaining caseworker regions provided no information at all. The outcome of the respondent's enquiries was provided to the Tribunal in a statement from Mrs Athi-Parkin, which stated that the respondent was aware that in a small number of cases, but not on the scale which the appellants and TAG contended, applicants fitting the "recent returnees" profile had been granted asylum.

HRW/FFT/TAG reports - confidentiality

35. During 2012, HRW, FFT and TAG all produced major reports and several press releases asserting that varying numbers of individuals had been ill-treated on return to Sri Lanka and asking the United Kingdom government to desist from forced returns. The majority of the press releases were timed for a day or two before known charter flights. It was not clear initially how many of the individuals in each report were the same, nor whether the respondent was aware of their circumstances.
36. The appellants and TAG by their Counsel and their witnesses insisted throughout the hearing on absolute confidentiality in relation to any personal information about the individuals concerned. We were not given access to the medical evidence underlying the HRW and FFT reports and the facts provided were heavily redacted.
37. The respondent had been asking, during 2012, for details of the individuals whose experiences were relied upon, to enable them to be verified on her own databases. TAG supplied the determinations it had found, most of which were available in September 2012. HRW and FFT declined to disclose to the respondent any identifying details of the individuals whose circumstances were summarised in their various reports. It was therefore impossible for the respondent to make any assessment of the validity of the allegations in the HRW and FFT press releases and reports issued during 2012.
38. Even now, it has not been possible to establish with certainty whether there is an overlap between the cases of which the respondent is aware, and those relied upon by the appellants. In each group, on close analysis, the examples relevant to the "recent returnees" profile are very few, and the evidence provided is anecdotal rather than statistically significant. This is partly because the information provided by the respondent was not precise or consistent across her regional casework groups, and partly because the appellants and the NGOs did not wish to share names or other identifying details with the respondent for that purpose. The parties assisted us by comparing the underlying names and details with each other and attempting to resolve the question of how many of their clients overlapped.
39. We have before us such factual details as the respondent was able to produce, together with tabular analysis of the examples relied upon by the appellants. We have considered what weight we can place on these examples. It is plain that there are a small number of returned Tamils, mainly students, who were granted asylum on application or on appeal, and who fit the "recent returnees" profile. None of the parties (including TAG) relies on cases where harm or detention occurred on return to individuals in other categories where multiple entry visas are given.

Ms Hogg and her HRW research

40. There was a particular difficulty with the oral evidence of Ms Charu Lata Hogg, a researcher at Chatham House, and former employee of HRW. Her evidence was based on research which she had carried out for HRW, in relation to which she was under a strong duty of confidentiality which prevented her giving any evidence other than that which was in her statement, or disclosing the name of her client,

which placed her in a very difficult position during the first day of her oral evidence on 8 February 2013.

41. The report based on Ms Hogg's research was in an advanced draft by 8 February 2013, but its publication had been set for 28 February 2013 (known to TAG and HRW to be the date of the next charter flight removal to Sri Lanka). The Tribunal asked for, and eventually received, evidence from HRW as to the circumstances in which that close timing had occurred. We will deal with the response by Mr Brad Adams of HRW (received in the form of two witness statements) later in this determination.
42. We adjourned Ms Hogg's evidence to the first available date after the report was published. Ms Hogg was recalled to give further oral evidence on 15 March 2013, at which time she was released from confidentiality at least in relation to the contents of that report and the body which commissioned it. She considered that she remained bound not to disclose the names or any personal details of those whose cases were considered in her research.

Updating the country guidance

Existing guidance

43. The core of the existing country guidance dates back to the decision in *LP* in 2007, which identified twelve "risk factors" which, singly or together, indicated an enhanced risk of persecution or serious harm for those returning to Sri Lanka at the height of the internal armed conflict between the LTTE and the GOSL. A number of factors (which became known as the *LP/TK* factors) were identified as being likely to raise official interest in returnees from the United Kingdom, particularly those on charter flights. The evidence underlying the *LP* decision was up to date as at April 2007 and focused principally on the risk of being identified and detained at Bandaranaike Airport in Colombo, or in Colombo itself. The AIT considered that the majority of returning failed asylum seekers were processed relatively quickly at the airport and with no difficulty beyond some possible harassment.
44. The AIT in *LP* emphasised that in each case the analysis of risk was fact-specific: in order for an individual to establish a real risk or reasonable degree of likelihood of persecution or serious harm if he or she were returned to Sri Lanka, the "risk factors", and the weight to be ascribed to them, individually and cumulatively, must be considered in the light of the credible facts established by such individual, having regard to the lower standard applicable in international protection claims.
45. In *TK*, decided soon after the end of the civil war in Sri Lanka, the AIT upheld the approach in *LP* but considered that, if anything, the situation for returning failed Tamil asylum seekers had improved. The evidence in *TK* was current as at 26 October 2009 and is therefore now almost three and a half years old. The civil war has ended and that has of course brought change, not just in the circumstances within Sri Lanka but also in the present concerns of the Sri Lankan authorities which may entail adverse interest in returning Sri Lankan citizens, including risks requiring protection under the Refugee Convention or Refugee Qualification Directive.

46. In a Policy Bulletin in October 2012⁵, reissued in March 2013, the UKBA Country Specific Litigation Team, Operational Policy and Rules Unit set out the history of the TAG, HRW and FFT reports and press releases issued during 2012. The bulletin, even when reissued, did not engage with new UNHCR Guidelines issued in December 2012.
47. On 21 December 2012, the UNHCR published new “Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka”, the first such guidelines since July 2010. The change in UNHCR’s assessment contributes to our view that now is the time for the Upper Tribunal to revise its guidance on Sri Lanka.
48. We considered that it was appropriate, in the light of the perceived changes and new UNHCR guidance, for the Upper Tribunal to reassess its own guidance on Sri Lanka. We wanted to consider whether the situation remained as it had been in *TK*, that is to say, that the country was settling down into a peaceful recovery from a long and brutal civil war, or whether the situation in Sri Lanka was indeed deteriorating as suggested and new guidance was needed. For the reasons we set out in this determination, we have concluded that the guidance needs to be replaced on the basis of the situation now.

Agreed issues

49. With the assistance of the parties, an exhaustive list was agreed of the issues relevant to the new country guidance and to these appeals. The agreed list is at Appendix B. Only questions 2-9 are of general interest and inform our guidance. Questions under heading 1 deal with the task of a country guidance determination and need no elaboration. The issues set out at paragraphs 10A, 10B and 10C are specific to each individual appellant.
50. The areas of general interest which the Tribunal and the parties agreed to consider concerned the circumstances of exit from Sri Lanka, forcible return to Sri Lanka, entry and exit procedures at Colombo airport, with particular reference to charter flights, living in Colombo (whether that is an appellant’s home area, or as an internal relocation option); issues relating to residence and/or LTTE or anti-government activity in United Kingdom; the position of war crimes witnesses; the rehabilitation process for former LTTE cadres and its use today; and a small number of other factors which may be relevant to the assessment of risk.
51. We have not considered whether asylum claims are being asserted in the United Kingdom based on self-inflicted scarring, or scarring inflicted at an appellant’s request, in the United Kingdom, Sri Lanka, or elsewhere. The Upper Tribunal has identified another appeal where that issue may be relevant. No such allegation is made in respect of any of the present appellants.

Evidence

⁵ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificpolicybulletins/srilanka-polbulletin?view=Binary>.

52. The oral and written evidence which we received is set out fully in the Appendices to this determination. There was strikingly broad agreement between the witnesses as to the militarisation of the Northern Province and as to the concerns of the government about possible resurgence in the diaspora of Tamil separatism and/or of the LTTE or a similar Tamil separatist organisation. We shall refer to relevant aspects of the evidence when discussing the individual issues. The following is a concise summary of the other points which we draw from the evidence before us:

Appendix C - the UKBA witnesses

53. The evidence from the UKBA witnesses was as follows. Mr Malcolm Lewis gave a clear picture of the operation of the BHC's Migration Support team (the MDO and MSO) at the airport. The MSO and (where there is one in place) the MDO meet all charter flights. Arrangements at the airport have been improved. No arriving passengers are subjected to ill-treatment at the airport, the authorities being very well aware of the allegations levelled against them in the past. Returnees were interviewed by the DIE and SIS at the airport, their onward details taken, and permitted to proceed, unless there was a "stop" notice indicating a court order or arrest warrant against them.
54. They were given details of how to contact the BHC after their onward journey and sometimes did so, often seeking advice on how to return to the United Kingdom, but sometimes making allegations of ill-treatment. The only one he had been able to investigate proved to be significantly overstated: the appellant said he had been ill-treated and that his head was bleeding, but doctors in Jaffna refused to assess his injuries. He returned to Colombo for medical assessment and it turned out that his shins had been kicked at the airport.
55. Returnees were asked at the airport about addresses they were associated with before leaving the country, their last address in the United Kingdom, and their onward address in Sri Lanka. They might be asked for details of schools, former employers, and travel history, or their reasons for returning to the United Kingdom. They might be asked to sign a declaration that the details were true. He could not say whether the returnees were asked about their LTTE links as he was not allowed to be in the room during questioning.
56. Where individuals returned other than on a charter flight, they could walk through the airport on their own passport. They were unlikely to be of interest even if travelling on a TTD, unless they were on a "stop" list. Those on a "watch" list would be monitored later by the security services but not stopped. Sometimes an airline might notify DIE about a particular returnee and if so, that returnee was usually (but not always) handed to DIE at the airport.
57. Onward addresses were checked by the police or the CID within seven days from arrival. Details of offences in the United Kingdom were not passed to the Sri Lankan authorities by the British authorities. Most people were on their way quickly at the airport though some waited two to four hours.

58. Mr Lewis was aware of allegations that passports were not scanned on exit if a suitable bribe was paid: however, exit was through an open area with 15-20 desks all visible to the Chief Immigration Officer who sat behind. He did not think it was possible to switch off a terminal without being discovered.
59. Mr Gallagher dealt with the preparation of Country of Origin Reports. He also represented the country of origin service in its meetings with the Independent Advisory Group on Country Information (IAGCI), an external assessor. He explained the process of production of the country of origin documents, which he supervised. He confirmed that some of the criticisms made by Dr David Rampton in his report for IAGCI on the March 2012 Country of Origin Report had been accepted by the respondent, but none had yet been incorporated into the her reports, guidance notes or bulletins.
60. Mr Wright is a member of the respondent's Country Specific Litigation Team (CSLT) which prepares the Operational Guidance Notes (OGNs). The OGNs are supervised by the IAGCI and reflect all relevant information and case law. CSLT works with external sources (in particular, Still Human Still Here and the FFT submissions to UNCAT). When the December 2012 OGN was drafted, CSLT consulted case owners to see whether the existing main categories remained current. The response was that no new trends in asylum applications were highlighted, including 'individuals who had previously had valid leave to be in the United Kingdom'.
61. CSLT also issues *ad hoc* Country Policy Bulletins on particular issues. He was responsible for the Bulletin first published on 15 October 2012 and republished a week later, changes having been made in response to comments from TAG. The rest of Mr Wright's evidence concerns matters of detail in relation to the HRW cases and is dealt with later in this determination.
62. Mrs Athi-Parkin provided a statement on 13 February 2013 in response to a directions order from the Tribunal, requiring the respondent to disclose her knowledge of any upward trends in asylum claims based on detention or torture after return to Sri Lanka, 'even where the individual had not previously sought asylum but had simply been visiting or studying here'. The statement is set out in full in the Appendix and analysed later in this determination.
63. After setting out the information produced, Mrs Athi-Parkin said that:
- "...the respondent accepts that there is a pattern of persons with lawful residence in the United Kingdom who claim to have returned to Sri Lanka, and to have been detained and tortured there, and who have then returned to the United Kingdom and sought asylum. The respondent accepts that some of these individuals have been granted asylum by the Secretary of State or on appeal to the Tribunal."

Appendix D - Dr David Rampton

64. Dr Rampton commented for IAGCI on the March 2012 Country of Origin Report on Sri Lanka. His evidence covers that consultancy report, in which he criticised the

respondent for failure to deal with certain specific cases and also for a lack of breadth in the sources relied upon.

65. His report deals principally with his own knowledge and opinions in relation to the issues before us. He noted that:

“12. ...President Rajapaksa himself ... on multiple occasions in speeches and interviews has blamed the Tamil Diaspora for driving the conflict and for making impossible demands that prohibit a peaceful settlement. For this reason the GoSL has engaged in surveillance of the Tamil Diaspora in European and Western societies as an attempt to prevent and/or contain the (re-)emergence of the LTTE or another militant Tamil nationalist movement. It is worth noting that the LTTE did operate as a global network with offices, funding networks, arms procurement and commercial shipping arms located amongst and directed from pro-LTTE sections of the Tamil Diaspora.

13. As a result, the GOSL's attitude towards failed asylum seekers is that they represent a potential security threat to the Sri Lankan state and society and that any potential suspect aligned to Tamil nationalism must therefore be subject to close scrutiny and investigation by the security and intelligence forces. ...

18. ...Where individuals have revealed information that illuminates aspects of the civil war crimes issue (including the scale of civilian casualties), the GOSL has used coercive pressure and/or threat to force individuals to retract statements. Many international observers believe that this was the case with the five Tamil Doctors who had provided medical services in the Vanni during the last phase of the civil war, who after making statements about the extent of civilian casualties were then detained and accused of giving false information to the media by the GoSL. Their original claims and predicament was then backed up by Wikileaks cables between the US Embassy and Washington.

The GOSL has also suffered increasing opprobrium and pressure in the wake of war crimes allegations amongst the international community including a successful US-backed resolution adopted at the UN Human Rights Council in March 2012. All of these factors indicate that however hardnosed the GoSL may appear at times over the civil war crimes issue, it is and always has been concerned to keep as tight a lid as possible on the release of information about the issue. ...”

66. Dr Rampton was particularly concerned about the threat to judicial independence within Sri Lanka:

20. ...although many of the problems with both media freedom and the judiciary are long-standing, it should be noted that the spread of authoritarianism has centralized more power in the hands of the President, his family, his patronage machine and removed the weak existing checks that might prevent abuses operative within state apparatuses. The recent impeachment of the Chief Justice Shirani Bandaranayake is yet another example of the ability of the President to ride roughshod over constitutional procedure out of political fiat. These tendencies do have an impact upon the media and its ability to operate freely and upon the criminal justice system, both of which in turn will affect the willingness of people to speak out where they have suffered abuse, torture and degrading treatment by the authorities and security forces.

21. Firstly it should be noted that any complaint about torture or other mistreatment exists within a generalized situation where access to due judicial process, rule of law and protection is problematic because the judicial system lacks independence, transparency, accountability and safeguards to protect victims of abuse and torture and witnesses to such crimes. This makes the willingness of individuals who have suffered torture or abuse, to report these incidents less likely as they have little assurance of protection from authorities in a situation where it is widely recognized that police and security forces are widely implicated in forms of torture, degrading treatment and abuse in detention and in order to obtain confessions, with reports indicating that it is widespread in Sri Lanka's policing practices and not just utilized for high-profile targets.

22. These same reports also indicate regular flouting of habeas corpus, irregular trial procedures, intimidation of lawyers and denial of access to legal counsel. Human rights advocacy reports have also stated that lawyers, the police and judges are deeply inter-dependent socially, professionally and financially and this sometimes precludes the willingness of defence lawyers or judges to challenge police evidence. It is reasonable to deduce that such a context acts as a significant constraint upon the willingness of people to report or publicise incidents where they have suffered torture or abuse and therefore in turn a check upon the quantity of cases that appear in the media."

67. There was almost no post-arrival monitoring by NGOs or the BHC of what happened to returnees. He had no reason to doubt reports of abductions and arrests ('white van abductions') at or near the airport, at bus stops or at checkpoints. His research was based on internet materials, in particular TamilNet, and on personal sources whom he spoke to when he needed information.

Appendix E - FFT witnesses

68. There were two witnesses for FFT, the first being Professor Sir Nigel Rodley, who set out the management structure of FFT and the scale of the important work it does in helping individual torture survivors and providing medico legal reports where appropriate. Professor Rodley has a long history of working with testimony of torture, both at Amnesty International (17 years) and in his nine years as UN Special Rapporteur on Torture. He had oversight of the FFT submissions to UNCAT in November 2011 and the 13 September 2012 Briefing, but the research was that of Ms Jo Pettitt.
69. Professor Rodley had written to the Minister to ask him to suspend removal of Tamils while the UKBA policy was adjusted to reflect the evidence produced in those reports. The Minister had asked for further information on the individuals concerned. Professor Rodley strongly agreed with FFT's refusal to provide that information. He gave six reasons: breach of client confidentiality and the difficulty of obtaining consent from the individuals after their details had been used; the high regard in which FFT was held, including expressly by UKBA, such that its word should be enough; UKBA's request was perceived as part of a pattern of other governments which were also seeking to challenge its research methods; possible deterrence of individuals whom FFT might ask to take part in future research projects; the best interests of FFT's clients; and FFT's status as a source of expert

evidence against the Secretary of State, such that discussing the details directly with the UKBA was inappropriate.

70. Professor Rodley was also responsible for writing to the Treasury Solicitor to complain about the content of the UKBA October 2012 Policy Bulletin and the comments therein about FFT. The complaint had been acknowledged but not answered.
71. In his oral evidence, Professor Rodley accepted that even documented evidence of torture was not evidence of how or where it had occurred: however, he had confidence in the skills of FFT's experienced clinicians and, having sat in on some of their interviews, also in the rigour of their approach. He considered they were more reliable assessors of torture accounts than decision makers or judges, who were hampered by the quality of representation before them and their lack of medical expertise.
72. In relation to the confidentiality point, Professor Rodley's oral evidence was the same as his written evidence and it came to this: that FFT is a highly respected provider of medico legal reports and its evidence should simply be accepted. There should be no requirement for it to be tested in any other way.
73. Some of the questions Professor Rodley was asked were outside his expertise: he was asked about the lack of evidence in the FFT composite report about methods of escape, which he stated was irrelevant to the assessment of the harm and the treatment, which was always FFT's focus; he was asked about the signing of confessions in the Sinhalese language, returnees from other countries, and exit methods. His answers on these points indicated that these areas were not within his knowledge.
74. Ms Jo Pettitt is the researcher responsible for the work which underlies the two composite reports on Sri Lanka, the UNCAT submission and the Briefing. FFT's country reporting programme is relatively new and is intended as a systematic analysis of patterns and evidence of torture in particular countries, with a view to holding states accountable. Contrary to Professor Rodley's concerns, where Ms Pettitt was using MLR data prepared by FFT, she had sought consent from the individuals concerned, but had received it from only half of those approached. There were also other less detailed pieces of evidence which she had considered. The statistical evidence is considered later in this determination and set out in the Appendix.
75. Ms Pettitt had not met the individuals: she had worked from the paper files and medico legal reports. She had not analysed those who were not accepted by FFT as torture survivors; there was no indication as to the scale of any differential; and she had not looked beyond the medical elements of the reports. The numbers who fell within the period and profile which FFT wished to analyse were very small. The information was heavily redacted and she was not authorised or willing to go beyond that redaction.

Appendix F - HRW

76. The HRW evidence was that of Mr Brad Adams, the organisation's Asia Director in New York, and Ms Charu Lata Hogg, a researcher at Chatham House who, although she was called by the third appellant, was so constrained by her contractual relationship with HRW that her evidence must properly be considered as the evidence of that organisation. The evidence of both witnesses concerned the preparation and publication of HRW's report: "We will teach you a lesson: sexual violence against Tamils by the Sri Lankan security forces"⁶. The report was published on 26 February 2013 and Ms Hogg was the researcher whose statistical work informed the report.
77. Mr Adams was not available to give oral evidence and his application not to do so was supported by the parties; he lives in California, where it was night at the time when the Tribunal wished to hear his oral evidence. He provided two witness statements in March 2013, to which, absent his oral evidence, we can give only limited weight. Mr Adams' evidence was that HRW did not consider that every Tamil returned to Sri Lanka was at risk. However, torture, rape and sexual abuse were common in detention in Sri Lanka.
78. The February 2013 report set out HRW's recommendations to the GOSL: to investigate and prosecute all rape and sexual violence allegations against the Sri Lankan security forces, before and after the civil war, ending the culture of impunity; to repeal the PTA and the system of detention without charge or trial; to lift the access restrictions to the Northern Province to allow medical personnel, counsellors, and NGOs providing psycho-social support and independent medical examination and treatment to reach victims of human rights violations; to charge or release those held under emergency or anti-terrorism laws; to conduct prompt trials meeting international due process norms; to ensure that all ranks of the security services receive proper training on 'civilian protection'; to disclose the whereabouts of detainees and rehabilitees, maintaining a computerised accessible database of the information and allowing family and medical visits; to institute a reparations programme; and to:
- l. Ratify the following international conventions: the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Rome Statute of the International Criminal Court; and the International Convention for the Protection of All Persons from Enforced Disappearance;
- m. Invite and facilitate the visits of UN special procedures including the UN special rapporteur on torture, the UN Working Group on Arbitrary Detention, the UN Working Group on Enforced Disappearances, the UN special rapporteur on violence against women, and the UN special rapporteur on the independence of judges and lawyers."
79. Dealing specifically with the charter flights and publicity, Mr Adams confirmed that HRW had released information in May and September 2012 close to the date of the charter flights in order to influence both the United Kingdom public and government

⁶<http://www.HRW.org/reports/2013/02/26/we-will-teach-you-lesson-0>

to prevent the intended returns. He denied that the same was true of the latest report, which he stated had been prepared for the UN meeting in March 2013.

80. He confirmed the contractual restrictions on Ms Hogg preventing her from disclosing voluntarily unpublished names or information without HRW's permission, which would be withheld if confidentiality issues were at stake.
81. The evidence of Ms Charu Lata Hogg was heard over two days, the first before publication of the report, and the second after publication. She provided three reports, on 21 January and 28 January 2013, and on 12 March 2013. She set out the restrictions on her evidence in the first report:

"2. The names, place of residence and as well as potentially incriminating details of the dates and locations of victims' detention and abuse have in the majority been withheld to address concerns about their vulnerability to possible reprisals by Sri Lankan security forces should information in this report enter the public domain. I have included information from sources I consider reliable based on my knowledge and experience on Sri Lanka. I have provided as much detail on the sources as can be safely provided. Given the vulnerability of sources in Sri Lanka, I would like to request the court to omit mentioning specific names and details on individual sources in the decision as this could potentially lead to the identification of these sources by Sri Lankan authorities and make them vulnerable to future ill-treatment."

82. We deal in detail with the statistical evidence provided by Ms Hogg in the Appendix, and it is assessed later in this determination. In more general observations, Ms Hogg noted the authoritarian nature of the current government in Sri Lanka. Her report quoted Dr Pakiasothy Saravanamuttu of the Centre for Policy Alternatives, as follows:

"30. ..."The current government in Sri Lanka is strong but insecure because of a variety of factors which include on-going allegations of war crimes in its defeat of the LTTE; any development which could potentially challenge its main achievement, the defeat of the LTTE, and thereby contest its success; the fear of loss of protection should the leaders suddenly be stripped of official position and power; and finally the fact that the government is entrenching a dynastic project."

83. A three-member advisory panel appointed in 2010 by UN Secretary-General Ban had not been permitted to visit Sri Lanka; its intended visit was widely perceived as the precursor to a war crimes trial. The LLRC was the GOSL's own investigation: HRW, Amnesty International and ICG had refused to give evidence before it, on legitimacy grounds. In April 2011, the UN panel had reported (without visiting Sri Lanka) and had criticised the behaviour of the Sri Lankan government forces and the LTTE at the end of the civil war.
84. There were significant restrictions on freedom of the press, with journalists self-censoring and also suffering physical attacks if they wrote or spoke against the régime. Those who aligned themselves with western perceptions were considered to be 'traitors...betraying the motherland'. The Sri Lankan judiciary was under pressure; a Parliamentary Select Committee had sought to impeach the Chief Justice;

the Supreme Court had held that to be ultra vires; the Chief Justice was nevertheless removed from office.

85. Corruption was widespread, and almost any service could be purchased for a price. Sri Lanka was 79th of 176 countries in Transparency International's Corruption Index. The government was a family business:

"83. Nepotism and clientelism is rife in Sri Lanka and political office has traditionally been used to perpetuate power and accumulate wealth. ... Mahinda Rajapaksa's election as President in 2005 broke the stranglehold of power by a small, higher class clan of political elite. Since then, the government is dominated by the President's family with two of his brothers holding key executive branch posts as Defense Secretary and minister of economic development, while a third brother serves as the Speaker of Parliament. A large number of other relatives, including the president's son, also serve in important political or diplomatic positions. The culture of nepotism goes beyond the echelons of political power and is noticeable in the civil services, judiciary, police and other divisions of state administration."

86. The former paramilitary forces had no role in peacetime: various groups had staked out areas in Vavuniya where they were responsible for most of the killings, abductions, extortions and threats. "White van" abductions were occurring, mainly for ransom and extortion, but sometimes also for the purpose of passing individuals to the security services. The EPDP was working closely with the Sri Lankan security forces.

87. The Sri Lankan government now proceeds on the basis of 'superior intelligence gathering abilities and mechanisms', a conscious change to its security strategy. Intelligence gathering since the civil war had been impressively effective, as some former high ranking LTTE members had cooperated with the authorities. The authorities had sophisticated intelligence about LTTE cadres and supporters, both domestically and abroad. In an interview with *The Sunday Leader* in May 2012, the Defence Secretary said:

"There is no need now for search and cordon operations or having many road blocks, checkpoints or rounding up people for questioning. That is no longer necessary. But there are other methods to keep vigilant. Especially on the intelligence side - we have increased military intelligence units. We are training them more and more in advanced methods so they can gather information on these affairs and have an early warning. Then we keep an eye on certain people that we know have been engaged in criminal activity. Certain people who have been rehabilitated and released - some have adjusted very well and integrated extremely well... some are working happily in various jobs, some are engaged in their own work. But there are a few people not terrorists but engaged in normal criminal activity. There is a possibility these people may get involved in terrorist activity again".

88. There had been no recent large-scale searches in Colombo and there were far fewer checkpoints there now. Tamils still had difficulty in finding work and accommodation in Colombo; for migrants, Tamil community support was required even in densely populated Tamil areas. The migrant Tamil population was in a different position from the integrated Tamils who had been there much longer and spoke Sinhalese. Her second supplementary report indicated that 24 of the victims

had been picked up in Colombo. In answer to questions from Mr Hall, Ms Hogg amplified that comment, stating that she had not analysed whether they had been detained before or after May 2009 in relation to detention by location.

89. Torture in detention continued in a culture of impunity. Those who were detained included former conscripts and administrators for the LTTE. Confessions were extracted for future use, although, as Ms Hogg acknowledged, as a matter of law confessions obtained under PTA detention could not be used in court and would have to be obtained again.

90. Ms Hogg was unaware of any hard evidence of genuine LTTE activity in Sri Lanka, nor any independent evidence of resurgence of the LTTE in the diaspora. Her interviews with experts led to the conclusion that:

“... while fund raising for the Tamil cause in the diaspora continues to remain active and there remains a residual nostalgia for the LTTE within Sri Lanka, chances of a revival of the LTTE remain dim”.

91. However, the GOSL remained concerned. Interest was high in those returning from the United Kingdom, particularly because of the United Kingdom’s traditional role in fundraising for the LTTE. Only the United Kingdom returned Sri Lankan citizens by charter flight. Although there was some protection from harm at the airport, the Sri Lankan security forces would pick up anyone in whom they were interested from their home address. Those without an identity card might be at additional risk, since that would alert the authorities that they had not been screened and might not have undergone rehabilitation.

92. The GOSL considered that Tamil Nadu, in India, and Australia had significant numbers of LTTE activists. LTTE activity was considered to exist also in France, Germany, Norway, Sweden, Belgium, Switzerland, South Africa, New Zealand and Canada. The GOSL was concerned about the current role of the worldwide diaspora, and was seeking:

“...to acquire intelligence on the activities of this politically active diaspora, particularly on its contribution to international moves towards an inquiry into alleged war crimes committed by the state in its 2009 defeat of the LTTE ... to send a signal to the diaspora that any involvement in an international campaign against Sri Lanka would result in harsh consequences”.

93. The GOSL was a paranoid organisation which needed to ensure that the LTTE remained a threat, to justify its militarisation amounting to occupation of the Northern Province. Ms Hogg set out a list of organisations which the GOSL regarded as LTTE fronts worldwide:

- Tamil Rehabilitation Organization / International Tamil Rehabilitation Organization),
- White Pigeon,
- British Tamil Association (BTA),
- World Tamil Movement (WTM),
- Tamil Coordinating Committee (TCC),

- British Tamil Forum (BTF),
 - Tamil Youth Organization (TYO) (branches in 12 countries including the United Kingdom)
 - Coordinating Committee of Tamils-France (CCTF).
 - Tamil Coordinating Committee (TCC) (in Germany, Norway, Netherlands, Australia, Sweden, South Africa, Belgium & New Zealand)
 - World Tamil Movement (WTM) (Canada); and
 - World Tamil Coordinating Committee (WTCC) (Switzerland).
94. There were 20,000 children in Tamil-run schools worldwide, which were not under the supervision of national education systems and were used for propaganda purposes. The GOSL had concerns about the curriculum in those schools and whether they were being used to raise and train a new generation of insurgents.
95. The rehabilitation process was accurately described by the UKBA in its current Country of Origin Report. It was a process of detention: the normal period was two years, though some had been detained for longer. After release, reporting and residence conditions were imposed and rehabilitees could be rearrested if perceived as 'stepping out of line'.
96. In her oral evidence, Ms Hogg said that nobody knew how many were detained under the PTA. There was active reconstruction of damaged infrastructure in the Northern Province, but only by and for the benefit of the Sri Lankan military occupation: banks, restaurants, vegetable shops and so on were being reopened in military hands. Tamils had not participated in the economic growth; they were reduced to the status of witnesses of the reconstruction in the Northern Province. The GOSL was aware that some of those returning from the diaspora had been economic migrants.
97. The statistical evidence provided by Ms Hogg was based on a group of 120 interviewees, a mixture of torture victims, family members and witnesses of torture. Only 31 of them had been detained and tortured after the end of the conflict: 12 in 2010, 11 in 2011 and 8 in 2012. Some of them had been interviewed over Skype because they were still in Sri Lanka but most had been interviewed by her in the United Kingdom, with a trusted interpreter assigned by HRW. All had provided medical evidence, in most cases medico legal reports but sometimes ordinary medical reports.
98. The names of the doctors involved were not disclosed: HRW had decided that was inappropriate on confidentiality grounds. Nothing that might give away the present location of the victims was to be disclosed unless specifically cleared with the victim. 26 of the victims were picked up and detained in Colombo; they included a Sinhalese man, three Muslims, and a member of the Frontline Socialist Party. There were 13 Tamils in the group, two of whom were included in the group reflected in the HRW submissions in May and September 2012.

Appendix G - TAG

99. Many of the witnesses we heard were found and paid for by TAG but are categorised according to the type of evidence they give and its sources. The only witness whose evidence was specific to TAG was Ms Jan Jananayagam. Ms Jananayagam has been involved with *pro bono* Tamil community projects for 10 years, latterly specifically TAG and TAG (Europe), which prepared and published the “Returnees at Risk” report⁷. She had taken a sabbatical from her financial services job for a year to produce it.
100. The report was based on United Kingdom judicial determinations on Sri Lankan returnees and was prepared by a multi-disciplinary team selected by Ms Jananayagam. The data set was sourced through a small number of intermediate professionals who were willing to introduce suitable asylum seekers. She did not regard the set of examples as representative and it was not her case that “all Tamils” were at risk on return. In particular, she did not consider that there was a specific category of students at risk; rather, her researcher had been to see some of the same people as seen by HRW’s researcher, and the asylum appeals had already been given to HRW. Only the students remained, which distorted the sample.
101. She was also conscious of the small size of the sample and the lack of any balance between successful and unsuccessful appeals. They had worked on the basis that if voluntary returnees were at risk, that must mean that failed asylum seekers were also at risk. The abuse in the data set had peaked in the three months following the release of the first of the “Sri Lanka’s Killing Fields” documentary series by Channel 4, in June 2011.
102. The risk was to those perceived to have useful information (such as details of the LTTE’s banking, which was the case with one of the present appellants). A membership card was not always necessary, since the GOSL recognised the existence of “civilian supporters”. During the period when the LTTE was the government in the Northern Province, it had judges, civil servants and a whole state infrastructure. Everyone had been involved to some extent: it was unavoidable.
103. Ms Jananayagam’s name had been published on a list of LTTE “agents” in the diaspora; she did not know who had prepared the list. It was indicative of the GOSL’s mindset. The GOSL had made it clear that they were monitoring contacts between diaspora figures and those in Sri Lanka, in the context of the 2012 Royal Jubilee and President Rajapaksa’s visit to the United Kingdom. In particular, TAG and the diaspora tried to find out who was travelling with President Rajapaksa on foreign visits with a view to filing a war crimes complaint against those they knew to have committed war crimes. The GOSL had stated that it “knew what the diaspora was planning”. Local emails and telephone calls were monitored; some of those interviewed had been asked to identify photographs taken in the United Kingdom. Ms Jananayagam no longer visited Sri Lanka personally or contacted people directly in Sri Lanka since an email from her was likely to cause trouble for the recipient. TAG employed consultants to work “under cover”.

⁷ <http://www.tamilsagainstgenocide.org/Data/Docs/TAG-Report-16-Sep-2012-Returnees-at-Risk.pdf>

104. Ms Jananayagam had stood as an independent in the last European elections and received 50,000 votes on a platform concerning Tamil separatism and what TAG regarded as the 'genocide' in May 2009.

Mr Alan Keenan

105. An email from Mr Keenan of International Crisis Group (ICG) dated 1 February 2012 is relied on by TAG. It is in an odd format for an email and bears no signature or supporting statement of truth. This is what it says:

"...I can verify that in my work with the International Crisis Group, I have come across at least one witness (Witness X) living in hiding outside of Sri Lanka who was approached by a group of Sri Lankan Tamils posing as journalists attached to Channel 4 television in Britain, which, as you know, had earlier produced a powerful and well-publicised documentary entitled "Sri Lanka's Killing Fields". The Sri Lankan team claimed to be seeking evidence of war crimes committed by the Sri Lankan security forces and sought to interview witness X for a follow-up Channel 4 documentary. Witness X declined but put the team in touch with two other Sri Lankan Tamils s/he knew who were willing to describe their experiences in the final phase of the civil war. Witness X never saw her/his two friends again, has not been able to learn of their whereabouts and fears they have been abducted and/or killed. Channel 4 staff involved in making "Sri Lanka's Killing Fields" confirm they never approached witness X and did not work with any of those witnesses X described. They also confirm that they have heard from credible independent sources that others were also targeted by the same scam. I am not able to name the witness or reveals her/his location in order to protect them from almost certain torture and death should they be located by Sri Lanka military intelligence."

Appendix H - Mr Callum Macrae

106. Mr Macrae, through his company Outsider TV, is responsible for a series of films made for Channel 4 entitled "Sri Lanka's Killing Fields" [2011], "Sri Lanka's Killing Fields: War Crimes Unpunished" [2012].⁸ A third film was shown to the UN meeting in March 2013 but is not yet available on Channel 4. They concern the events in May 2009, rather than circumstances today. His evidence is set out in full in the Appendix.

107. Mr Macrae's written evidence dealt in addition with the increase to Sri Lanka's military budget; the inadequate commissioning of and response to the LLRC report; the opinion of the Sri Lankan Army Board that the diaspora was seeking to destabilise Sri Lanka and constituted "a clear and present danger" to the national security of Sri Lanka. He noted the purported impeachment of Chief Justice Bandaranayake and the killing of the founding editor of the Sunday Leader, Mr Lasantha Wickrematunge.

108. In his oral evidence, Mr Macrae stated that the GOSL was paranoid about its international reputation. It was unsafe for him and his team to return to Sri Lanka; Channel 4's security team had refused to authorise it on workable terms. He had not tried to enter the Vanni, since that was off limits to journalists.

⁸ <http://www.channel4.com/programmes/sri-lankas-killing-fields/4od>

109. The GOSL was rebuilding the Northern Province but not as a Tamil homeland. It was extremely dangerous to be a government critic in Sri Lanka. Almost 60 local media workers had been killed, and overseas media workers had been expelled. At a gathering of the Commonwealth Heads of Government in Perth, Australia, in 2012, the Sri Lankan President's media adviser had attacked Mr Macrae's work on camera, waving his finger and saying that his films were LTTE funded and "absolutely part of the global conspiracy to restart the civil war". The GOSL distrusted the diaspora; the worldwide diaspora itself was riven with dissension and penetrated by GOSL agents. The mistrust, on all sides, was in his opinion well founded.
110. In cross-examination, Mr Macrae said he had not been to Sri Lanka since 2011, after the Japanese tsunami. He became aware then of "white van disappearances" which seemed to be state sponsored. The GOSL was funded by China, Iran, Israel and Pakistan. Its diplomats in India, Britain and Canada were military commanders, ensuring that the High Commissions would keep Colombo informed of developments there.
111. The Sri Lankan government was sinking, ever more deeply, into a really dangerous place, a paranoid culture of ultra-nationalism. The country was military-run and regarded itself as still under siege, on the basis that at any moment the LTTE might revive the internal armed conflict. Almost every returning Tamil was regarded with deep suspicion. The Tamil community was treated as a threat, which needed to be marginalised. Anyone with the mildest pro-Tamil opinion was a threat.
112. Mr Macrae was unaware of the terms of the LLRC recommendations or of express invitations by the GOSL to the Tamil diaspora to return and help rebuild the country. His opinion was that the GOSL did not distinguish between Tamils and the LTTE. In re-examination, he stated that that any assertion of Tamil identity would be an assertion of separatism and a risk. Sri Lanka was a very corrupt country and he was aware of a number of stories of release in return for money.

Appendix I - Professor Anthony Good

113. The key points in Professor Good's reports confirm that Sri Lanka is now dominated by the Rajapaksa family. Both the authorities and the Tamil separatists circulate misleading, and even false, information within Sri Lanka and abroad. He confirmed the 18-month detention without judicial supervision in the PTA and the continued incidence of torture in detention. Corruption and bribery were widespread; release through payment of a bribe was extremely common. There were 200-300 escapes a year from official detention centres, but no statistics on informal detention centres. Release did not necessarily indicate a lack of further adverse interest; there was evidence of re-arrest and abduction of former LTTE cadres on the Eastern Province Coast and in the Northern Province, in both 2011 and 2012.
114. He confirmed the use of "watch" and "stop" lists at the airport. Immigration Officers did not have the underlying data, just the instruction to "stop" or "watch" which originated from the security services. Backgrounds of returning asylum seekers would be known to the CID and SIS but immigration officials had access to their databases only on request. There were CID and SIS personnel at the airport.

115. Virtually the entire population of the Vanni was interned and screened at the end of the civil war, to identify LTTE cadres. Rehabilitees were given a release certificate, valid for 6 months, with an address at which they were required to reside. They had to register with the military Civil Affairs Office and report as required. Many remained under intensive surveillance after release.
116. The LTTE has lost the capacity to undertake conventional military conflict. The Sri Lankan government continued energetically to track down those involved during the civil war, or suspected of it. It was extremely likely that the authorities actively monitored protests in London and that anyone known to have participated would be under suspicion. Hundreds of photographs of demonstrations were in the public domain. The GOSL had explicitly threatened to arrest those who demonstrated against the visit of President Rajapaksa to London in 2010. In addition to the LP/TK list of factors, which he considered remained relevant, Professor Good recommended that the Tribunal add two more, those involved in demonstrations against the GOSL overseas, and those involved in independent media or human rights activities critical of the GOSL.
117. In oral evidence, Professor Good stated that although there were media (print and electronic) in the Northern Province, they were restricted as to what they could report and were excluded from HSZs.
118. Although approximately 300,000 people had been screened at the end of the civil war, Professor Good did not know whether there had been any abuse of those screened; his opinion was that there probably had not been.
119. Information from a mission by *Office français de protection des réfugiés et apatridés* (OFPRA) to Sri Lanka published in September 2011⁹ indicated that those screened were divided into categories A to E, with A being high-ranking LTTE figures and E those with a short-lived LTTE connection. He could not assist further as to the rehabilitation process.
120. Rehabilitees received IOM cards; the IOM kept track and maintained records of rehabilitees. He considered that the number of persons reported as being picked up was low because families had been warned not to complain.
121. He considered it obvious that the GOSL did not regard all Tamil returnees as a terrorist threat. The largest Tamil diaspora was in Toronto, but the most active was in London. The Tamil government in exile was in New York: in 2012, there had been elections across the worldwide diaspora. The Tamil Prime Minister in exile was Visvanathan Rudrakumaran, the LTTE's former international legal advisor, now a US citizen living in New York.

Appendix J - Dr Chris Smith

⁹ http://www.refworld.org/publisher,FRA_OFPRA,,4ecb5c892,0.html

122. Dr Smith provided four written reports. He noted that after the civil war, the 300,000 IDPs were issued with ration books and that there were records of them all. He explained the screening process.
123. He stated that there was unequivocal and universal relief in Sri Lanka, including among the Tamil population in the Vanni, at the end of the civil war. The Sri Lankan security forces were seeking to identify any remnants and had made specific searches in the Eastern Province in 2012, believing that LTTE cadres had returned there. There is a massive intelligence operation across the Vanni, with every village having a "catcher" or informant. New arrivals are scrutinised by the "catcher". Not having been screened in May 2009 would not have any particular consequences. The authorities relied on the "watch" list, an electronic database of individuals of adverse interest, which triggered covert surveillance.
124. An identity card was required for employment, accommodation and medical care. It could be replaced in the home area, but that was easier if you still had a passport, birth certificate, or serial number from a previous identity card. Estimates suggested that there were 100,000 Tamils without identity cards at the end of the civil war. Within the Vanni, during the 2012 sweep for returned LTTE cadres, anyone travelling without a Sri Lankan identity card was detained.
125. Every detention resulted in a record being raised. There was a centralised database, lodged with the Ministry of Rehabilitation, the SIS and military intelligence, with details of all LTTE suspects. The CID do not have unlimited access to this database. They can access it only on a case by case basis. What is available at the airport is the "watch" and "stop" electronic databases. Staff at the SLHC passed all details of applications for travel documents to Colombo, and incoming flights were required to fax their passenger manifest in advance.
126. Not all Tamil asylum seekers abroad were of adverse interest; that despite public statements by the Sri Lankan authorities that "all asylum seekers are terrorists", the evidence indicated that they knew that many are economic migrants. Scarring alone is not a significant issue but may contribute to "rousing suspicion", in that detained persons are stripped to their underwear during interrogation, at which time scars would be evident.
127. In 2011, UNHCR data indicated that 75% of those using its voluntary repatriation scheme were contacted in their homes by the army or the police: every returnee to the Vanni was required to register with the authorities on arrival.
128. The GOSL had sophisticated intelligence, and was now monitoring and blocking websites as well as tapping telephones. In 2012, the GOSL admitted that it was routinely tapping the telephones of 687 people, including those of politicians, religious leaders, newspaper editors and journalists. Bribery and corruption were rampant and the judiciary and police wholly ineffective in combating them.
129. In Colombo, well integrated Tamils with no LTTE connections had no real problems. However, Tamils with identity cards from other parts of Sri Lanka would attract attention and risked detention if they could not explain why they were in Colombo.

130. In his oral evidence, Dr Smith stated that he had not seen the “stop” and “watch” list database. He had discussed with a Sri Lankan intelligence officer what it contained: reasons for adverse interest, biographical and family data. His experience of the airport checkpoints in Colombo was limited to the treatment of foreigners: he did not know what happened to Sri Lankans there. The atmosphere in Colombo had improved; there were still a few checkpoints there.
131. As to whether a person who had been released informally from detention was likely to be the subject of an arrest warrant, Dr Smith’s evidence was based on speculation; he had no knowledge of the processes by which families obtained such release, or their official consequences. He agreed that if no arrest warrant was issued, then the “stop” database at Colombo airport would have no record of such a person. In the Vanni, he understood that the occupying military kept track of former LTTE cadres and sympathisers through a highly developed network. His understanding was that those screened at the end of the civil war had not been ill-treated.
132. Dr Smith did not know much about the position of those photographed when attending London demonstrations: the only thing he was certain of, in relation to the face recognition question, was that there were no cameras at Colombo airport. The mere fact of being a returned asylum seeker would not of itself cause adverse interest in a person at the airport; if, when interviewed at the airport, they were not of adverse interest, they would be allowed to proceed.
133. Dr Smith stood by his general evidence in *TK*, save that he was less sure that there was a comprehensive exchange of records between CID and SIS. Paper records were being uploaded in reverse chronological order. Police stations in the Northern Province were not yet computerised, though all police stations were to be networked nationally soon.

Appendix K - other country evidence

134. The evidence of four more country witnesses was received. Dr Sutharan Nadarajah provided both written and oral evidence. The Tribunal did not have the opportunity to hear the oral evidence of Professor Rohan Gunaratna, Dr Pakiasothy Saravanamuttu or Mr Anton Punethanayagam.
135. Professor Rohan Gunaratna is the architect of the rehabilitation process; he helped the GOSL to design, develop, implement and evaluate it. He is also an expert on the LTTE, on which he has published many books. He was called as a witness for the first appellant, and confirmed that the first appellant’s knowledge and account of his activities contained matters known only to those involved in the secret finance wing of the LTTE. He considered the first appellant’s account to be accurate and credible.
136. He explained the differences between how selection for rehabilitation was made in 2009 and now, but did not give details of the rehabilitation programme itself. Whereas all identified LTTE cadres had been rehabilitated in the 2009 tranche, the GOSL’s approach in 2013 was to send to rehabilitation those who it believed could benefit from it. The selection was nuanced, and guided by concerns about the resurgence of the LTTE in the diaspora. The decision whether to detain and rehabilitate was made after a

fact-specific assessment by the police, the security and the intelligence services working together. The 45 rehabilitees placed back in rehabilitation in Jaffna in December 2012 had been arrested because the security services believed them to be in contact with LTTE operatives in the diaspora.

137. He confirmed that it was his understanding that when being re-documented for return to Sri Lanka at SLHCs abroad, applicants were routinely asked about past LTTE links. There were no detention facilities at the airport; if a returnee was of interest by reason with past or current links with known LTTE front organisations abroad, they would be invited for interview once they had returned home, rather than at the airport.
138. Professor Gunaratna's report exhibited a report¹⁰ on Sri Lanka's Defence Ministry website, recording a joint briefing carried out by him in Australia on 3 January 2012, with the Australian High Commissioner for Sri Lanka, Admiral Thisara Samarasinghe. Professor Gunaratna said this:

“Professor Gunaratna began proceedings by explaining the magnitude of the terrorist threat that Sri Lanka had to face and the sophistication and brutality of the LTTE which was finally defeated militarily in 2009. He explained the circumstances of the humanitarian rescue operation undertaken by the Sri Lanka Government to rescue 300,000 civilians who were being held hostage as human shields. Speaking of his involvement in developing a programme for the rehabilitation of LTTE ex-combatants, he said that the programme had successfully rehabilitated and reintegrated most of those that surrendered (11,600) save a few hundred who have been heavily involved in terrorist activities against whom judicial action would be taken depending on evidence available.”

139. High Commissioner Samarasinghe said:

“The High Commissioner said further that he was deeply concerned about certain elements in the diaspora in Australia who were intent on destroying the processes of reconciliation and economic development taking place in Sri Lanka by continuing a campaign of separatism. He highlighted the involvement of these diaspora members in LTTE and LTTE front activities and said that they have already begun fundraising campaigns for the cause of creating a separate state of Tamil Eelam in Sri Lanka. He added that these front organisations were similar to those set up by the LTTE in the Eighties, through which they raised funds and procured arms and ammunition to unleash terrorism in Sri Lanka. ...The High Commissioner concluded his presentation with a photograph depicting a recent marriage which had taken place between a Sri Lankan soldier and a former LTTE combatant. He said that reconciliation was happening in Sri Lanka between the two communities and the pro-LTTE diaspora should not be allowed to derail that process.”

140. Dr Pakiasothy Saravanamuttu is a prominent human rights campaigner based in Colombo, with an international reputation. In 2009, he received death threats and was detained by the TID at Colombo airport. He was awarded Sri Lanka's National Peace Council's first Citizens' Peace Award in 2010, established “to honour and encourage those individuals in civil society who have demonstrated courage and consistency in the protection of and respect for human rights; peaceful settlement of disputes and

¹⁰ http://www.defence.lk/new.asp?fname=20120301_04

promoting increased understanding between and among communities”¹¹. Dr Saravanamuttu remains the subject of hostile comment, including a poster campaign in 2013, for his views on human rights, governance and transparency in Sri Lanka.

141. Dr Saravanamuttu declined to answer all of the agreed questions, citing pressure of time. He dealt with the tight control by the Rajapaksa family, the impeachment of Chief Justice Bandaranayake, and the events at the end of the civil war. He noted that there remained serious housing problems for those released from Menik Farm Camp in September 2012, especially as many had homes in the HSZs to which they could not yet return. The Sinhalisation of Tamil areas included:

“...renaming of places and the building of religious markers of the majority community in areas predominantly inhabited by the minority Tamil, Hindu and Christian communities as well as demographic change.”

142. Dealing with deficiencies in the LLRC’s report and its implementation, Mr Saravanamuttu set out the nuanced position it took on the May 2009 events:

“62. On accountability the LLRC falls short, endorsing the GOSL stand that it did not target civilians. The LLRC however, concedes that inadvertently, GOSL forces could have been responsible for civilian deaths and calls for an investigation of these instances. The LLRC also states that the Channel 4 documentary contains serious allegations against the reputation and standing of the GOSL and that an investigation to clear the name and reputation of the GOSL is in order. It further calls for the re-opening of investigations into the murder of 17 humanitarian workers in 2006 and the killing of 5 Tamil students on the beach in Trincomalee in the Eastern Province, also in 2006.

63. On reconciliation and governance, the LLRC endorses a number of proposals and positions taken by civil society for over a decade. In respect of the Rule of Law, the LLRC recommends the separation of the Sri Lankan police from the Ministry of Defence, independent oversight commissions be established as under the now jettisoned Seventeenth Amendment to the Constitution and that a Special Commissioner for Disappearances be appointed. It also calls for Right to Information legislation and a Victim and Witness Protection Act. ...

65. The GOSL has come up with a National Human Rights Action Plan, which was presented at the UPR and an Action Plan for the Implementation of the LLRC recommendations in July 2012. ...

66. Critiques of the Action Plan have pointed to its selectivity, lack of clarity in respect of commencement and the over-reliance on the Ministry of Defence and a parliamentary select committee for implementation.”

143. Mr Anton Punethanayagam is a barrister who has practised at the Sri Lankan Bar in both Colombo and Vavuniya and has represented about 3000 persons detained under the PTA over the last two decades. His standing in the legal community in Sri Lanka is high¹².

¹¹ http://transcurrents.com/tc/2011/02/first_citizens_peace_award_of.html

¹² Mr Punethanayagam is Vice Chairman of the Vavuniya branch of the Sri Lankan Red Cross Society, President of the Vavuniya Bar Association, Member of the Bar Council and the Legal Aid Committee of the Sri Lankan Bar Association and President of the Vavuniya Prison welfare association. He is a magistrate and a Justice of the Peace.

144. Mr Punethanayagam's opinion was that the GOSL now focuses on armed Tamil resurgence rather than past activities. The closing of the camps in 2012 was a propaganda measure, since many persons remained in the camps as their home areas were unavailable, either being occupied by the army or still in HSZs and subject to demining. Insufficient detail is available as to what happened to all the LTTE cadres and members who surrendered at the end of the civil war; some senior members of the LTTE were occasionally brought before the courts but did not get a fair trial, in his opinion. There was no public record of who remained alive and detained.
145. He dealt with the expiry of the Emergency Regulations and their incorporation into the PTA, as well as the arrest of the Jaffna students attempting to celebrate Martyrs Day after the LLRC report recommended that Tamils should be permitted to do so. He dealt also at some length with the attacks on the independence of the judiciary, and the purported impeachment of Chief Justice Bandaranayake, who was removed and was replaced by Attorney General Mohan Peiris, a close associate of President Rajapaksa: Mr Peiris represented the GOSL at the UNCAT hearings in 2011.
146. Approximately thirty of Mr Punethanayagam's 3,000 clients had contacted him after having left Sri Lanka when of adverse interest, using bribery. He did not say when that had occurred. Information from Mr Punethanayagam's client database about the use of bribery was as follows:
- “26. ...The paramilitary groups, working alongside the SLA, assist the escape of detainees in order to extort money. In my practice, I have come across several cases where the families use bribery as a last resort to secure the release of a detainee with the assistance of members of the security forces or paramilitary groups.
27. The bribery is very common in the IDP camps as well as the detention centers from which even known LTTE leaders have managed to escape on payment of bribes. Hence it cannot be argued that only people of low interest to the authorities are able to secure their release through a bribe. In my opinion, it is plausible that the detainee was released following the payment of a bribe, even if of significant adverse interest to the authorities. It is unlikely that the person who accepts the bribe would access the detainee's record and change them as released or no longer wanted. Hence such cases would normally be recorded as escaped from detention in the database of the Police. Subsequently an absconder action will be commenced and the detainee's details would be passed to the National Intelligence Bureau.
28. It is possible to leave the country using bribery with the help of an agent. The security officers and immigration officers at the international airport are no exception to the widespread bribery and corruption in Sri Lanka. It is always possible for a person to use influence or bribery to get through the airport without being detained as an LTTE suspect. I have been contacted by approximately 30 clients who managed to flee the country via the international airport whilst in the adverse interest of the authorities and I provided evidence in their asylum cases in the UK, Canada, France, Norway and Australia. Therefore leaving through the airport either with his/her own passport or false identity does not necessarily indicate a lack of interest on the part of the authorities.”
147. The witness' opinion that absconder action would be commenced after a person was released on payment of a bribe is not sourced.

148. Dr Suthaharan Nadarajah is a lecturer at the Centre for International Studies and Diplomacy at SOAS. His research covers the Tamil diaspora's changing relations in the last decade with the GOSL, the LTTE, and the international community. He is writing a book on international interventions for security and peace in Sri Lanka since 2000.
149. He noted the increasing politicisation of the diaspora worldwide. The London diaspora had staged some of the most dramatic large scale protests. The GOSL's attitude to the diaspora had hardened to one of hostility and suspicion. They considered the diaspora to be plotting LTTE resurgence, threatening not just the Rajapaksa family but the unitary Sri Lankan state; the diaspora's activities were perceived as having a negative effect on the image of Sri Lanka worldwide. In addition, the GOSL considered that the diaspora hosted potential war crimes witnesses and provided an opportunity for pan-Tamil political coordination outside the influence of the Sri Lankan authorities.
150. The aim of the Sri Lankan authorities was to monitor, interrupt and prevent connections between Tamils in Sri Lanka and diaspora activists worldwide; some Tamils in the diaspora worked with the GOSL reporting diaspora activities and identifying activists within the diaspora.
151. The GOSL had put great effort into thwarting any international war crimes prosecutions or investigation in relation to the May 2009 events, and those suspected or known to be war crimes witnesses, in his opinion, would face very severe consequences on return.
152. He had not directed his research towards the position of returned asylum seekers. His understanding was that the GOSL regarded them as economic migrants. He referred to a letter from Bishop of Mannar, Dr Rayappu Joseph, who had appealed to the Australian authorities to stop deportation of Sri Lankan Tamils. Excerpts of his letter had been published in the Sydney Herald and the Age, both mainstream Australian publications.

“...It is common knowledge that those deported back after seeking political asylum abroad are left to live in fear and fright due to being considered traitors by the Government and its armed Forces. Some of them are being forced to become informants creating tension in the communities. They all are meted out with restrictions, threats, intimidation, questionings, surveillance and other forms of harassments and discrimination by the Military, Police and the intelligence officers. ...Thus, it is my considered opinion that it is highly dangerous for the asylum seekers from the North and East of Sri Lanka in Australia to be sent back to Sri Lanka in the prevailing political situation in our regions. ...”¹³

Since publishing this appeal, and publicly embarrassing the GOSL, the Bishop had been questioned three times by the security forces.

153. The witness' evidence repeated that of other witnesses about the disproportionate military build-up in the Northern and Eastern Provinces, having regard to the low risk

¹³ Full text of the letter: <http://www.tamilguardian.com/article.asp?articleid=6484>,
Article in The Australian: <http://www.theaustralian.com.au/national-affairs/immigration/sri-lankan-bishop-warns-of-harassment-for-repatriated-tamils/story-fn9hmlgu-1226531633454>.

of resurgence by the Sri Lankan LTTE, and the army occupation of land, together with HSZs, preventing tens of thousands of Tamils from resettling.

154. Dr Nadarajah explained the pressures on media sources, over and above self-censorship: media proprietors interfered in media content, particularly in non-State media, which depended on government advertising for revenue; the Sinhalese media contained nationalist sentiments, backed by incentives and State coercion. The authorities restricted the internet and mobile devices, blocking websites and monitoring both telephone and electronic communication.
155. There was no systematic monitoring of human rights abuses. The Sri Lankan Human Rights Commission had been revived in 2011 but its members were all political appointees and he considered its impartiality to be 'demonstrably suspect'.
156. In his oral evidence, Dr Nadarajah explained 'Pongu Thamil'¹⁴, the series of uprisings in 1999 and during the peace process era. Pongu Thamil had been a broad social movement, similar to the *intifada*, in support of Tamil separatism. The GOSL regarded all the Pongu Thamil activists, particularly student activists, as Tamil Tigers and a significant number of them, especially students, had been liquidated in "white van" killings during the shadow war from 2005-2007. The GOSL remained sensitive to the activities of Jaffna University students; Jaffna University was the source of junior LTTE cadres during the civil war and a bellwether for the social situation and the level of Tamil unrest generally.
157. 'Pongu Thamil' would never return; the channel of protest now was online petitions, although occasionally Tamils took to the street to mark particular occasions. The other significant occasion was Mahaveera¹⁵, celebrated on 18 May in every year since 2009. The Tamil community came together for Mahaveera; it was an opportunity to recognise and honour the families of heroes who had not returned, and who might be buried unmarked in heroes' graves, or never have been found at all. Mahaveera was a day of mourning and defiance, with particular resonance for the May 2009 deaths at Mullaitivu in the NFZs.
158. The arrested Jaffna students in December 2012 had been marking Maaveerar Naal on November 27¹⁶. Several dozen of them conducted a candlelit vigil. Hundreds of others demonstrated. A large number of students were arrested and released later with no accounts of ill treatment. The university was closed down, with students boycotting lectures. In addition, 120 Jaffna University lecturers signed a petition for the remaining students to be released. The arrest of a smaller number of students would discourage the remaining students and their parents; the students had been transferred elsewhere and it was known that previously, arrested students had been beaten and tortured.
159. Large numbers of Tamils were returning to Sri Lanka; those with British passports could do so with more confidence since there was at least some oversight by the BHC.

¹⁴ 'Tamil Upsurge' or 'Tamil Uprising'

¹⁵ 'Martyrs' Day'

¹⁶ 'Heroes Day'

He considered the GOSL's invitation to Tamils to return and help rebuild Sri Lanka was a publicity exercise for the international community.

160. Those with Sri Lankan or no documents were in more difficulty. They were seen to be a threat to the GOSL and the Sri Lankan authorities and the GOSL was seeking to "defeat the diaspora", which had become increasingly active, particularly in London.
161. The Sri Lankan authorities and the GOSL were concerned to deny and restrict evidence which could be used in war crimes trials abroad. In 2007, five students in Trincomalee (the Trincomalee Five) had been executed. There were proceedings in the United States issued in 2009, he thought, in relation to the Trincomalee Five. A journalist who took photographs of that incident had been killed. In 2006, 16 international aid workers had been killed, the second largest such incident worldwide. Extensive claims had been documented from 2002 onwards by ceasefire monitors, and in addition, avoiding a war crimes trial relating to the thousands of deaths in the No-Fire Zone in May 2009 was a subject of intense concern to the GOSL. If there were to be a successful prosecution, more claims would emerge. He considered that there was a risk to those who were even suspected of having evidence of events between January and May 2009.
162. Dr Nadarajah had not been to Sri Lanka since 2003. His research began that year; he had to be careful as some of those with whom he corresponded had died subsequently. He received information over Skype, telephone calls, and by awaiting the arrival of journalists from Sri Lanka who would speak to him in confidence. Hotmail and Gmail email accounts and telephone calls (mobile and ordinary) were monitored, as were others; websites were randomly taken down; Skype was considered to be relatively safer. He had to wait for his contacts to get in touch, or use separate email addresses and coded language. Computers could be traced where Hotmail was used. Mobile phones and the internet were not readily available in the Northern and Eastern Provinces; in Colombo they were available but were very expensive, and he considered that the providers had to keep in the 'good books' of the GOSL. There were internet cafes in both Jaffna and Colombo.
163. He considered that figures for the Tamil population within Sri Lanka were overstated, since many of those in the old textbooks which formed the basis of the present figures were now in the diaspora. He gave figures for the number of Tamils in various places in the diaspora:

<u>Place</u>	<u>Tamil numbers</u> (approximately)	<u>Comments</u>
United Kingdom	200-250,000	First generation (second generation not readily recorded)
Canada	300,000	
Switzerland	40-50000	

France	40-50000	
Australia	80000	
Italy	80000	
Norway	15-20000	
Tamil Nadu	100,000	Registered refugees in camps (number of those who travel back and forth not known)
Malaysia		Numbers hard to calculate
Singapore		

164. Dr Nadarajah told us that he had a conversation with a very senior defence correspondent at the end of the 1990s, in Sri Lanka, who said that United States military intelligence were about to help the GOSL upgrade its surveillance capability; he considered that the opening of the American Center in Colombo by an important Sri Lankan military commander indicated that the relationship was close.

Submissions

165. We received extensive written and oral argument from all parties, before, during and after the hearing of these appeals. We mean no disrespect to the parties in not setting them out in full in this determination. The following is a summary of the country points arising out of the closing submissions, when all the evidence had been heard and was before the Tribunal.

A. Respondent's submissions

166. The respondent's case at the beginning of the hearing was that changes in Sri Lanka after 2009 were broadly positive and that Sri Lanka could now be regarded as safe for most Tamils to return. Mr Hall relied in particular on the decision of the European Court of Human Rights in *E.G. v. The United Kingdom* - 41178/08 [2011] ECHR 846.

167. Having heard the evidence, in his closing submissions, oral and written, Mr Hall accepted that the country guidance would have to change. He also accepted a number of points as having been established. We consider that he was right to do so, on the evidence now before us. Where relevant, the concessions he made have informed the country guidance we give, but that guidance is based on all of the evidence and argument, written and oral, before us.

168. Mr Hall accepted that individuals in custody in Sri Lanka continue to be at risk of physical abuse, including sexual violence, and that such risk is persecutory. Evidence before the Tribunal confirmed that, pursuant to an amendment to the Prevention of Terrorism Act (as amended) (PTA), the authorities could lawfully detain individuals for 18 months without any judicial oversight or remedy. The 11,000 LTTE cadres, who

underwent the re-education process known as “rehabilitation”, were detained for at least two years, and some for as long as four years. Mr Hall accepted that there appeared to be no statutory underpinning for the rehabilitation process: to the extent that “rehabilitation” was based on the detention powers in the PTA, even without any evidence of physical or sexual abuse, he accepted that detention without judicial supervision for such lengthy periods amounted to persecution.

169. Mr Hall further accepted that forced returnees, whether travelling on a charter flight or scheduled flight, are asked for confirmation of the address to which they intend to proceed on leaving the airport, and must expect to be visited at that address by the police or the CID in the days following return, and if of interest, may be detained or revisited thereafter: now that Sri Lanka had achieved the unitary state, with the GOSL controlling the whole territory, internal relocation was not an option for those in whom the Sri Lankan authorities were interested, since their whereabouts were known and they could be traced easily.

170. He accepted that there were no detention facilities at the airport and that, given the prevalence of bribery and corruption in Sri Lanka, having left Sri Lanka without difficulty was not probative of a lack of adverse interest in an individual. On return, the computers at the airport hold two lists: a “stop” list, comprising names and bio data details of individuals against whom there is either a court order or an outstanding arrest warrant; and a “watch” list of those whose activities the authorities wish to monitor. Those on a “watch” list are not reasonably likely to be detained at the airport. However, those whose names are on a “stop” list will be stopped at the airport and passed to the relevant security service in accordance with the order or warrant.

171. Mr Hall noted that, having regard to Mrs Athi-Parkin’s statement, it had been established that during 2011-2012, the respondent had granted asylum to a number of (mainly student) returnees with multiple entry visas who had been tortured on return to Sri Lanka, some of whom had scars.

172. The respondent continued to rely upon her OGN of April 2012 and on her policy documents in October and December 2012. Only 13 examples of persons with the “recent returnees” profile had been disclosed from the respondent’s own records, of whom two had returned voluntarily to Sri Lanka, two were Dublin II returnees, and nine had been compulsorily returned. The compulsory returnees had been in Sri Lanka for periods between 22 months and just under 8 years after being returned before coming back to the United Kingdom and claiming asylum, such that the causal connection between their history in the United Kingdom and the difficulties they then experienced in Sri Lanka was not strong.

173. Overall, Mr Hall said that between 60 and 90 examples of “recent returnee” asylum seekers had been disclosed in all of the parties’ materials. In the period between the end of the civil war in 2009 and December 2012, 6073 Sri Lankans had claimed asylum in the United Kingdom. Neither the UNHCR in its December 2012 guidelines, nor the HRW evidence contended that the risk category should be regarded as “all Tamils”. It was curious that of all the groups with multiple entry visas, such abuse was reported only by students. The students themselves had not given evidence and the “recent

returnee" data should be approached with caution. He reminded the Tribunal of the evidence of Mr Wright: in 2011, the BHC in Colombo had granted 20,168 visas for the United Kingdom, 5,058 of them for study (unfortunately, without any ethnic breakdown between Tamil and Sinhalese students). On FFT's evidence, only 24 students had come to harm. It was not being suggested that "Tamil students" were a risk category. No similar evidence from the diaspora in Toronto, Oslo or Paris was made available to the Tribunal.

174. As regards the TAG and HRW evidence, he accepted Ms Pickup's annotations on Mr Hays' tabular analysis as an accurate summary of some information in those cases. About one third of the tabular analysis appeals had been heard without a representative for the respondent; her failure to pursue the appeals further carried no particular weight since the findings relied on were findings of fact, and an appeal lay only on a point of law to the Upper Tribunal.
175. Nor was there any evidence to assist the Tribunal as to the treatment of those who were not detained. Tamils were participating in the democratic process: the UNHCR Guidelines (footnote 38) recorded that the Tamil United Liberation Front (TULF) had won a number of local government seats in the 2010 election.
176. Turning to the risk in Colombo, Mr Hall noted that Ms Pettitt's research for FFT included a small number of people who she recorded as having been picked up in Colombo. Ms Pettitt had not asked the question of others in the sample group (and some did not wish her to disclose where they were picked up); her focus was on the harm, and not where it had been caused. However, the Tribunal's task included the assessment of differential risk as between Colombo and the Tamil areas in the Northern and Eastern Provinces.
177. Mr Hall submitted that the evidence suggested that now, four years after the end of the civil war, the risk of being identified, or perceived, as an enemy of the GOSL or the Rajapaksa regime was lower in Colombo, as opposed to the heavily militarised Northern Province.
178. There were relatively few checkpoints in Colombo now and, in Sri Lanka as a whole, checkpoints were not yet computerised. Some of the examples given were of persons picked up at the Omanthai checkpoint in Colombo. It was established that there were no computers at that checkpoint and no explanation was offered as to how those individuals had been identified as of interest. Absent any other factor, failed asylum seekers would be at no greater risk than anyone else at an offline checkpoint. There was no requirement to demonstrate loyalty to the regime by singing nationalistic songs, as in Zimbabwe.
179. Dealing with rehabilitation, and noting that to the extent to which "rehabilitation" was really PTA detention, it would be persecutory, Mr Hall said that the other processes such as monitoring, surveillance, reporting and the like, after the initial rehabilitation, were processes which took place in many western democracies and were insufficiently adverse treatment to amount to persecution or serious harm engaging the international protection Conventions.

B. Appellants' submissions

180. The appellants divided the general country questions between them and their submissions were heard in inverse order, with Mr Mackenzie, representing the third appellant, leading, followed by Mr Spurling and Mr Palmer. Ms Jegarajah's submissions for TAG were taken last.

(1) Mr Mackenzie's submissions

181. Mr Mackenzie focused his submissions on four areas: rehabilitation, risk in Colombo, internal relocation, and returnees from the United Kingdom. He submitted that there was no established or durable improvement in conditions in Sri Lanka, four years on from the end of the civil war. In some respects, the situation had deteriorated. The Sri Lankan government elected in 2010 was a paranoid, corrupt, chauvinist regime. Risk today was not the same as in 2009; it now related not to a person's past history, but to their actual or perceived association with the LTTE resurgence in the diaspora. Past actions would be regarded as strongly indicative of present sympathies, especially if an individual was returning from a diaspora hotspot (London, Toronto, Paris or Oslo).

182. The GOSL's domestic pronouncements, and its continuing high militarisation of the Tamil areas in the Northern Province, were based on the express premise that it considered that the LTTE was capable of returning to combat. The respondent in her April 2012 OGN had accepted that the Sri Lankan authorities feared LTTE resurgence and were continuing to search for and detain persons suspected of being sympathisers or operatives (3.6.2).

183. The GOSL had no concern at all for international opinion, despite its assertions to the contrary. The recent impeachment of the Chief Justice, Dr. Shirani Bandaranayake, for her position on the lawfulness of land grabs in the Northern Province had proceeded, undeterred by an international outcry or the threat to re-site the CHOGM meeting due to be held in Sri Lanka in autumn 2013. The GOSL had repeatedly lied to the international community and had openly intimidated opponents at the CHOGM meeting in Perth Australia in 2011. No weight should be given to the GOSL's assurances to the UN that the LLRC recommendations would be fully implemented in Sri Lanka by May 2014.

184. President Rajapaksa had stated that checkpoints were no longer the primary way in which LTTE sympathisers and cadres were identified. His government made extensive use of intelligence-led security, with informers across the entire country. Its pervasive intelligence networks delivered reliable information as to who were former LTTE cadres or involved, or linked to the LTTE resurgence efforts in the diaspora. The networks functioned both in the Tamil areas in the Northern Province of Sri Lanka, and in the United Kingdom. If the government had grounds for suspicion, whether from an appellant's past or present history, that would be sufficient to create a real risk of persecution or serious harm.

185. It was submitted that the process of investigation of any suspected or perceived links, and of interrogation, would engage international protection as the Sri Lankan

government was known to use arbitrary detention and torture. In addition, he argued, human rights abuses were also used by the GOSL as part of the process of protecting Sri Lanka from any LTTE resurgence. There was an intention to terrorise those interrogated, with a view to demonstrating to others that those who 'stepped out of line' would be tortured, within an inch of their lives, or even beyond.

186. The investigation process remained ethnocentric, designed to exclude Tamils. When a Tamil was asked to sign a document which he could not read, written in the Sinhala language, it was unlikely to be an unimportant or innocent document. He reminded the Tribunal of the decision of the Court of Appeal in *Selvaratnam v Secretary of State for the Home Department* [2003] EWCA Civ 121.
187. The respondent should be held to the position taken in her published OGN, which was the guidance used by caseworkers in determining asylum applications. She had expressly adopted that as her statement of case and the appellants therefore had not produced evidence dealing with matters which were in their favour in that document and which were accepted therein.
188. The Tribunal should find that there was a risk on return for those who had not been subject to the rehabilitation process; there was a plain risk that they would be required to do so on return, if they were thought to have LTTE sympathies. He reminded the Tribunal of the Jaffna students who, following the publication of the LLRC recommendations, had celebrated Maaveerar Naal (Heroes Day) in November 2011 and been arrested and sent for rehabilitation. Thousands of LTTE members who had surrendered at the end of the civil war had been sent for rehabilitation and the same would happen to his client.
189. There seemed to be no legal underpinning to the rehabilitation process; detention in the rehabilitation camps was plainly under the PTA. The process had no reasonable purpose (*Senathirajah Ravichandran v. Secretary of State for the Home Department* [1995] EWCA Civ, at paragraph 179). The respondent's OGN at paragraph 3.9.12 accepted that there existed a risk of torture in the rehabilitation camps and case owners were directed to consider a grant of asylum based on perceived political opinion in such circumstances. 18 months' detention on suspicion in these circumstances was a plain and flagrant breach of Article 5 ECHR. The rehabilitation process had a strong, non-benign and persecutory element, well beyond any legitimate purpose.
190. Post-rehabilitation monitoring of former LTTE cadres included restriction on internal movement, harassment, and strict reporting conditions, all without any judicial oversight. Arguably, the huge scale of the project far outweighed the risk of any LTTE resurgence now.
191. Dealing next with Colombo, there was no reliable evidence of a lower risk of being identified in Colombo as a person of interest on LTTE grounds. The respondent had accepted that internal relocation was not an option for those who had been identified as a risk to the regime: it was also clear, as the Tribunal itself had noted, that the process leading to the issue of emergency or ETDs or TTDs to returnees in the United Kingdom meant that the authorities in Colombo had all the information they required before a travel document was issued. The evidence also established that on return,

they would be asked about links to the LTTE, and they could not be expected to lie about those.

192. Five of those on the tabular analysis had been picked up, detained and tortured after being held at the airport for a relatively short period; eight had been picked up in Colombo and two in unspecified locations shortly after leaving the airport (probably, therefore, in or around Colombo). The HRW sexual violence report identified at least 18 people who had been picked up in Colombo, six at the airport and twelve in the city. Four of the twenty-four people in the FFT report had been picked up in Colombo itself. Two others had been picked up between the airport and Colombo.
193. The evidence did not support a finding that internal relocation was easier within Colombo, especially as the LTTE had a history of suicide bombing in the capital. The respondent's written closing submissions argued that internal relocation was easier in Colombo but Mr Mackenzie reminded the Tribunal that in his oral submissions, Mr Hall had accepted that there was no internal relocation option if a person were known or perceived to be associated with the resurgent LTTE. The same position was taken in the UNHCR guidelines of December 2012.
194. Significant numbers of decisions favourable to asylum seekers had been disclosed by the parties and the respondent, more specific examples than had been available in any previous country guidance case. There was more than enough evidence to raise serious questions as to the safety of return. It was not open to the respondent to seek to cast doubt on the fully researched and tested claims of abuse on which the appellants relied. The respondent had not sought to produce any evidence to the contrary effect and the evidence should be accepted at face value.
195. Those, such as his client, who had been released after the ceasefire, were bound to be on record. His client had been in the United Kingdom in the meantime and had two brothers who were also of interest to the authorities. He asked that the Tribunal allow the third appellant's appeal.

(2) Mr Spurling's submissions

196. Mr Spurling relied upon, and adopted, his written submissions as well as those of TAG and the other appellants, and the oral submissions of Mr Mackenzie, with the following differences and additions. Unlike the other appellants, he encouraged the Tribunal to continue to approach assessment of risk primarily by the use of risk factors, rather than the broader approach which we have adopted in this determination. Mr Spurling submitted that the "risk factors" approach was a tried and tested method and would assist the First-tier Tribunals. The existence in a particular case of one or more of the risk factors should never be regarded as determinative, but their presence elevated the risk to an individual, with each case being decided on its particular factual matrix.
197. The continuing heavy occupation of the Tamil areas, in particular the Northern Province, was inconsistent with more benign objectives and with the findings of the LLRC. The respondent's Operational Guidance Note accepted that the GOSL still engaged in torture, and had alliances with violent militias. The evidence before the Tribunal was that the government used spies and intelligence extensively, and that its

response to any expression of Tamil identity (such as that of the Jaffna students) was harsh. The Tribunal should not seek or expect rational behaviour from the Sri Lankan state, as persecution was by its nature irrational.

198. The target of the GOSL's malignity was Tamil opposition groups, the community of Tamil separatists, and was directed those with roots in the Northern Province and throughout the diaspora. The existing *LP* factor (viii), those who were returned from London, should be amended to read "London or other centre of diaspora opposition". Three additional factors should be identified:

- (i) having been an actual or potential witness of war crimes in the Eastern No-Fire Zone at the end of the civil war in May 2009;
- (ii) being a candidate for, or having been subject to post-war screening and/or rehabilitation, whether a person had been rehabilitated, spent time in the camps without being rehabilitated, or not been in the camps at all. This group would encompass all Tamils from the Vanni who had ever been associated with the LTTE at any level or had lived in any area under LTTE control;
- (iii) being perceived as hostile to the Rajapaksa Government or the Sri Lankan state.

Mr Spurling accepted that the extent to which the proposed new factors elevated the risk for a particular appellant would always be a question of fact.

199. Additionally, Mr Spurling asked the Tribunal to find that there was a particular risk to journalists critical of the government and its human rights record, although none of the present appellants fall into that category. As already stated, Mr Hall for the respondent, agrees that there is an elevated risk to journalists.

200. Mr Spurling accepted that the evidence the second appellant had given before the Upper Tribunal as to which camp he was in when he signed a document in the Sinhala language, had been different from that in his witness statement. His original account was that he signed it at Anuradhapura, a military detention facility under the PTA. The events in question were a long time ago and the appellant had undergone a number of stressful events since then. Any submission as to what he signed and where was necessarily speculative, but the document he signed was unlikely to have been a benign document, and on any view, its existence would elevate the appellant's presence in the records and the likelihood of his being on a relevant database.

201. The second appellant had spent three months and 10 days in detention and it would be surprising if no record existed of that detention. His release from detention had cost an enormous amount (32 Lakh rupees, equivalent to £16,670 at the date of hearing before us). His paternal uncle had a shoe business and had been able to arrange the payment; the appellant and his own family were not wealthy. Evidence produced on behalf of the appellants indicated that the average household income in Sri Lanka was Rupees 3,500 a month, so that the bribe paid amounted to over seven years' average

income. It was a huge sum and indicated that getting him out of detention had been extremely difficult.

202. The second appellant had never held a passport and would be obliged to return on a TTD. His departure from Sri Lanka was also irregular. Mr Spurling reminded us of the Mr Lewis' evidence as to the information required by the Sri Lankan authorities in Colombo before a TTD would be issued under the Bilateral Readmission Agreement. If returned to Sri Lanka, the Tribunal should assume that the second appellant would tell the truth about his past if asked.

(3) Mr Palmer's submissions

203. For the first appellant, Mr Palmer reminded us that the grant of permission had preserved the findings that the appellant had indeed been detained and tortured. In the alternative, the Tribunal should consider his evidence *de novo*. The grant of permission had been on all grounds and the Secretary of State had not opposed the basis of the grant.

204. The First-tier Tribunal Judge had accepted the medical evidence that the appellant had been tortured. The witness, Mr Manivannon, knew the first appellant's sister, and had been able to confirm both that she was high up in the LTTE's medical wing and that she was a member of Prabhakaran's personal medical team. Unfortunately, as he had been unable to present himself for cross-examination, Mr Manivannon's evidence was not tested. Mr Manivannon had been available on the first day of the hearing and had been found credible in his account of being an LTTE member given in his own appeal.

205. The first appellant was a war crimes witness: Mr Palmer relied on the evidence and on the arguments of Mr Mackenzie and Mr Spurling about war crimes witnesses. Professor Gunaratna's opinion, that the appellant had been a member of the LTTE carrying out financial duties, was an unambiguous opinion from a person with the expertise to give it. The Tribunal should so find. The addition, in the first appellant's oral evidence to us, of an allegation that he was on a wanted list to be shot was not surprising and there remained a credible *Chiver* core which should be accepted. His evidence was credible overall.

206. With the support of Ms Jegarajah, who represented both the first appellant and TAG, Mr Palmer invited us to be pragmatic in our approach and to focus on which of the First-tier Tribunal findings were infected by the material error of law identified in the grant of permission. The first appellant's appeal should be allowed.

C. Miss Jegarajah's submissions

207. In her role as representative of TAG, Miss Jegarajah argued that the mindset of the Sri Lankan government was that there should be one Sri Lankan state, one nation, and one religion. The approach was monolithic, with any threat from anyone with anti-state views, whether political, military, or as part of a collective organisation being dealt with severely. The Sri Lankan government worked with paramilitary groups who formed a real part of the GOSL's operations in the Northern Province. There was

a dual process of governance, underpinned by the so-called “white van” phenomenon. It was in the interests of the Rajapaksa government to say that the LTTE remained a threat, since its existing security activity was fundamentally unconstitutional, from the PTA to the Emergency Regulations (now lapsed, but effectively included in the amended PTA), and having regard to the intense militarisation which had occurred since the civil war.

208. Miss Jegarajah argued that the intention of the GOSL was not really to prevent the resurgence of the LTTE but to treat the Tamil community so harshly that it could not and would not reorganise and would therefore constitute no ongoing threat to the Sri Lankan state. She relied upon the post-mortem statement in January 2009 of Lasantha Wickrematunge, the late Editor of the *Sunday Leader*. His paper, the *Sunday Leader*, had been particularly critical of President Rajapaksa. Wickrematunge had been receiving death threats for some time, before being shot by four armed motorcyclists on his way to work on 8 January 2009; he died of his injuries in hospital.

209. In an editorial which Wickrematunge had written shortly before his death, which was published posthumously, he stated, "When finally I am killed, it will be the government that kills me". He expressed his repugnance for the LTTE:

“Neither should our distaste for the civil war be interpreted to mean that we support the Tamil Tigers. The LTTE is among the most ruthless and bloodthirsty organisations to have infested the planet. There is no gainsaying that it must be eradicated. But to do so by violating the rights of Tamil citizens, bombing and shooting mercilessly, is not only wrong but shames the Sinhalese, whose claim to be custodians of the dhamma is for ever called into question by this savagery - much of it unknown to the public because of censorship.”

210. In the same article, Wickrematunge addressed his old friend President Rajapaksa directly:

“Mahinda, when you finally fought your way to the Sri Lanka Freedom party presidential nomination in 2005, nowhere were you welcomed more warmly than in this column. Indeed, we broke with a decade of tradition by referring to you throughout by your first name. So well known were your commitments to human rights and liberal values that we ushered you in like a breath of fresh air. ...

In the wake of my death I know you will make all the usual sanctimonious noises and call upon the police to hold a swift and thorough inquiry.

But like all the inquiries you have ordered in the past, nothing will come of this one, too. For truth be told, we both know who will be behind my death, but dare not call his name. Not just my life but yours too depends on it.

As for me, I have the satisfaction of knowing that I walked tall and bowed to no man. And I have not travelled this journey alone. Fellow journalists in other branches of the media walked with me: most are now dead, imprisoned without trial or exiled in far-off lands. Others walk in the shadow of death that your presidency has cast on the freedoms for which you once fought so hard. You will never be allowed to forget that my death took place under your watch. As anguished as I know you will be, I also know that you

will have no choice but to protect my killers: you will see to it that the guilty one is never convicted. You have no choice.”

211. It was TAG’s position that all failed Sri Lankan asylum seekers were at risk on return. The Tribunal should not forget the May 2009 genocide when looking at the risk of persecution or serious harm today: the risk was greater than it had been, due to the ongoing political controversy. Anything up to 100,000 Tamils had been deliberately herded into the No-Fire Zones between January and May 2009, and had died or been killed there. The international community had taken no action regarding the impeachment in January 2013 of Dr. Shirani Bandaranayake, the Chief Justice, and the Sri Lankan government knew it could act as it pleased internally.
212. The Tribunal should ask itself what it meant to be a Sri Lankan Tamil now. Any implied support for a two state solution or for regional autonomy was regarded as a threat by the Sri Lankan government. All Tamils believed in a Tamil homeland, in Tamil pride, with events such as Mahaveera and Pongu Thamil being an opportunity to express their solidarity and their desire for a Tamil homeland. The United Kingdom was where the alternative war was being waged, since no protest was permitted in Sri Lanka. The United Kingdom Tamil community was very articulate and politically aware. She reminded us that when Ms Jananayagam had stood in a recent European election as an independent candidate on a Tamil separatist platform, she had received 50,000 votes from United Kingdom-based Tamils.
213. In London, the Tamil community ensured that the genocide was not forgotten; there was safety in living and protesting together. On his arrival at Heathrow for the Olympics in 2012, President Rajapaksa had been faced with criminal proceedings in Bow Street Magistrates’ Court, demonstrations of thousands outside his residence at the Dorchester and had been turned back from his planned visit to the Oxford Union on security grounds.
214. The Sri Lankan government was aware that all Tamils living in the United Kingdom were part of a collective organisation which maintained a sustained opposition to the Rajapaksa government. Any Tamil who claimed asylum abroad was therefore an opponent in the eyes of the GOSL, one of those trying to revive the internal armed conflict, and was at risk by reason of their perceived political opinion. It was not a question of extent; anyone who wanted Tamil self-governance simply could not return to Sri Lanka, and in particular, those who wished to express views about war crimes or a separate Tamil state were bound to face persecution.
215. Those who were war crimes witnesses, including everyone in Mullaivaikkal at the end of the civil war, were members of a particular social group and at risk for that reason alone. She asked us to look at the International Crisis Group’s latest report. The government’s express intent was to investigate and protect witnesses or war crimes but prosecution could, and should, go back years as it had in Yugoslavia and Rwanda; members of the present government had much to fear.
216. The respondent had not taken the opportunity available to her to put in evidence of determinations in her favour. She was fixed with the deficiencies of how she had chosen to present her case.

217. There were multiple stages when an appellant might come into contact with the authorities. The respondent's Operational Guidance Note established (paragraphs 3.16-3.19) that before a travel document was issued, and during intelligence collection at the airport on return, charter flight returnees would be asked who they were, who their people were, what was their permanent address in Sri Lanka and the whereabouts of their papers. They were expected to give, and reside at, their permanent address as shown on the national identity card. Support from the UNHCR was sometimes available at the airport but UNHCR representatives, like BHC MDOs and MSOs, were not permitted to sit in on the interviews.
218. Ms Jegarajah could not point to any evidence before the Tribunal as to the size of the transitory Tamil population in Colombo, living there clandestinely or in lodges, as opposed to the integrated urban Tamils there, who would be Sinhala-speaking. Staying in Colombo was not the authorities' expectation; however, only in Colombo was the assistance of IOM or UNHCR available.
219. It was much easier to understand what was happening in the Northern Province, since there was a much richer examination in the material before the Tribunal of what was going on there. The GOSL's questioning of all Tamils from the Northern and Eastern Provinces was geared to control, supervision and monitoring of the Tamil population. The authorities wanted to know about the LTTE in London and would ask about that, either in London or in Sri Lanka. It was now trite law that an appellant could not be expected to lie.
220. Although the British authorities did not monitor what happened after the airport, there had been some limited monitoring of returnees from India, as set out in the UNHCR report. The monitoring was not systematic, but Ms Jegarajah submitted that it showed that the UNCHR was not allowed to sit in on airport interviews, that 75% were visited by the Sri Lankan authorities at their registered address; and that there was a great deal of arbitrary arrest, detention and torture.
221. The UNHCR report showed that former membership of the LTTE at any level was determinative (page 27), including anyone who provided support. *Ravichandran* had established that repeated short-term roundups and detentions could amount to persecution. Second-tier human rights could no longer be the subject of any derogation now Sri Lanka was not at war, but there was a cold war going on, with human rights breaches every day in the Northern Province. She relied on paragraphs 63-65 of *Sepet & Anor v Secretary Of State For Home Department* [2001] EWCA Civ 681:

"63. There are some classes of case in which the threatened conduct is of such a kind that it is universally condemned, by national and international law, and always constitutes persecution: torture, rape (though of course it is not necessarily persecution for a Convention reason). In those instances, the question whether or not there is persecution is straightforwardly a matter of fact. ... There are other classes of case in which the threatened conduct is by no means necessarily unjustified at the bar of law or opinion: imprisonment is a plain instance (where its length is not disproportionate and its conditions are not barbarous). In such a case some further factor is required to turn the treatment in question into persecution. Torture is absolutely persecutory; imprisonment only conditionally so.

64. What is the further factor that may turn imprisonment into persecution? It can only be that the claimant is liable to be imprisoned for a Convention reason. There can be no other way in to the regime of Convention protection. In this case, then, the existence of a Convention reason is what defines the treatment as persecutory.

65. See where this leads. The putative act of persecution - imprisonment - is only such if it is inflicted for a Convention reason. (I leave aside all the uncontentious possibilities: that the military service involves acts or conditions which are barbarous, or that the punishment for draft evasion is barbarous or disproportionate). It is the why and wherefore of the punishment's infliction that alone can transform the imprisonment suffered into persecution. But then it must constitute persecution according to the Convention's common standard, within and according to the autonomous international meaning of the Convention."

222. The identification of risk factors and/or categories was unhelpful and a 'massive obstacle to fairness' in asylum proceedings. The risk could be caused by any number of factors combined. Miss Jegarajah asked us to set the risk category as "all Tamils".

Submissions in reply

223. In additional submissions, Mr Hall said that the evidence in the March 2012 Country of Origin Report on Sri Lanka was that there was a population of over 2 million people in Colombo, of whom about 250000 were Tamils, including about 25000 Indian Tamils.

224. He asked the Tribunal to read the whole of the judgment of Lord Justice Simon Brown in *Sepet & Anor v Secretary of State for the Home Department* [2001] EWCA Civ 681 (*Sepet and Bulbul*) and to look at the decision in the round. Ms Pickup commented that *Sepet and Bulbul* dealt with the persecutory risk from detention as part of a judicial process for draft evasion, rather than, as here, detention without any judicial oversight at all. The fact set in *Ravichandran* was also different: that case dealt with repeated, short-term emergency roundups and detentions, unlike the prolonged unsupervised detention here for up to 2 years. Grahl Madsen had stated that three months detention without judicial oversight was persecutory. Mr Mackenzie also took the Tribunal to evidence showing that the detention for the purposes of rehabilitation was typically for a two-year period, without judicial oversight.

225. Mr Spurling indicated that he relied on Professor Gunaratna's report, and on what occurred in detention, rather than the detention itself, to establish risk.

226. We reserved our decision, which we now give.

Legal framework

227. We remind ourselves that the persecution or risk of harm here alleged is from either emanations of the Sri Lankan state, or paramilitary organisations said to be cooperating with the GOSL. Sri Lanka is no longer a divided state and in such cases, the respondent accepts that internal relocation is not an option because the risk extends across the whole country.

228. The Tribunal's decisions in *TK* and *LP* identified twelve risk factors in the civil wartime period: a previous record as a suspected or actual LTTE member; previous criminal record and/or outstanding arrest warrant; bail jumping and/or escaping from custody; having signed a confession or similar document; having been asked by the security forces to become an informer; the presence of scarring; return from London or other centre of LTTE fundraising; illegal departure from Sri Lanka; lack of an ID card or other documentation; having made an asylum claim abroad; and having relatives in the LTTE.

229. The judicial head note in *LP* emphasised that each case should be considered on its own facts, rather than treating the twelve factors as a "check list". We consider that fact-based assessment continues to be the proper approach, and that it is time to reassess the risks overall.

230. At point (7) of the *LP* guidance, the Tribunal considered how a fact-finder should approach expert evidence:

(7) The weight to be given to expert evidence (individual or country) and country background evidence is dependent upon the quality of the raw data from which it is drawn and the quality of the filtering process to which that data has been subjected. Sources should be given whenever possible."

231. In *NA v United Kingdom* - 25904/07 [2011] ECHR 1272, the European Court of Human Rights expressly approved that approach and gave guidance regarding the approach to country evidence ('objective evidence'), saying this:

"120. In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (see *Saadi v. Italy*, cited above, § 143).

121. The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that same consideration must apply, a fortiori, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do.

122. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court. ..."

232. In *TK*, the AIT considered the *LP* guidance, which it approved as still valid, adding that :

“...b) Events since the military defeat of the LTTE in May 2009 have not aggravated the likely approach of the Sri Lankan authorities to returned failed asylum seekers who are Tamils; if anything the level of interest in them has decreased. The principal focus of the authorities continues to be, not Tamils from the Northern Province (or east) as such, but persons considered to be either LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms.

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

233. In *E.G. v. The United Kingdom* - 41178/08 [2011] ECHR 846 the European Court of Human Rights held that return on a TTD did not seem to make any difference to the risk at the airport, which it considered too low to engage international protection. The facts before the Court in *E.G.* arose from a Tamil last detained in 1996, who had not left the United Kingdom since 2000. No evidence more recent than 2010 as to conditions in Sri Lanka was before the Court.

234. On 27 February 2013, in *PK, II, TK, AK, KI and MBF v Secretary of State for the Home Department* [2013] EWHC 1064 (Admin), Wilkie J and UTJ Gleeson sitting jointly as a panel of the Upper Tribunal in respect of two claims, with Wilkie J sitting alone on another four claims which were not suitable for the Upper Tribunal, considered the respondent's decision to proceed to remove by charter flight approximately 90 individuals to Sri Lanka. The charter flight had been arranged for 28 February 2013, with the arrangements having begun in early January 2013. In two cases, the defendant had already agreed to defer removal. Of the remaining four, two had been transferred to the Upper Tribunal and two were retained in the High Court. The material passages are at paragraphs 16-19 of the judgment of Wilkie J:

“16. In addition, at paragraph 71 [of *SG Iraq v SSHD* 2012 EWCA 940, Stanley Burnton LJ] endorsed the test which had been formulated at first instance by Irwin J, which he summarised in the following terms:

“The court should not stay removal pending the decision of the Court of Appeal, unless the claimant has adduced a clear and coherent volume of evidence that the findings of the Tribunal were in error.”

17. Mr Hall seeks to rely on this passage as authoritative for the proposition that this court should not grant the interim relief sought, on the ground relied on by a large number of applicants and potential applicants, namely that the decision to issue removal directions through the means of this charter flight was arguably wrong in principle, or irrational, on the grounds that there was presently part heard a country guidance case which was likely to be determined within a few weeks, and was highly likely to change the existing country guidance. What is said is that it would be wrong to grant such relief without descending to a particular consideration of the facts of each and every case, so as to see whether the claimant had produced a clear and coherent body of evidence, that the conclusion of the Secretary of State in refusing a fresh claim was or would be in error in the light of the emerging country guidance.

18. In my judgment, the situation which is presented to the court today is virtually unique. It arises from the very particular circumstances of the timing of the decision to remove these claimants by a charter flight, at the very time that the UTIAC is actively seised with considering new country guidance. At a time when it is clear from the agenda that the UTIAC is considering the matter virtually afresh, and where it is accepted by the Secretary of State through the preliminary closing submissions, that the existing country guidance cases will have to change. That position is one which this court cannot blind itself to. The UTIAC has, I am told, received a huge amount of evidence, much of it, I have no doubt, clear and coherent, certainly sufficient to persuade the Secretary of State in her preliminary closing submissions to accept that the existing country guidance has to change.
19. In my judgment, it does not go against the decision of the Court of Appeal in SG for this court on this occasion to consider that this may be an appropriate case for granting interim relief, to prevent the Secretary of State carrying into effect a decision to remove persons who are to be removed on this charter flight, when that decision was taken in the knowledge and at the same time as the UTIAC was actively considering changing the country guidance given in case law, and when the agenda was as far reaching as it is, and the position of the Secretary of State in the face of the body evidence, has been to accept that some change is inevitable."

235. A generic stay was granted for all failed asylum seekers from Sri Lanka, pending the guidance to be given in the present decision.

Discussion

Our assessment of the witnesses

236. Starting with the UKBA evidence, we consider that the evidence of Mr Lewis is useful for the light it throws on the practicalities of the process of return, particularly as he was responsible for almost all of the summary letters written on behalf of the BHC in Colombo after charter flights to Sri Lanka. Mr Lewis' evidence was based on his own knowledge and on consultations with unnamed 'interlocutors' within Sri Lanka. To the extent to which he spoke of his own knowledge, given his practical experience and position within the returns process, we give it weight. We are able to give much less weight to the evidence from the 'interlocutors' since they were not prepared to be identified.
237. Mr Gallagher's evidence as to the preparation and purpose of the UKBA Country of Origin information was helpful. We had concerns about the delay in absorbing and reflecting criticisms by Dr Rampton of the breadth of the sources used, in his report to IAGCI on the March 2012 Report. Dr Rampton's criticisms were acknowledged but no attempt had been made to include them in the December 2012 Policy Bulletin. It is unfortunate (and perhaps surprising) that the Country of Origin Unit was unaware of the imminent UNHCR guidelines which emerged the day after the Policy Bulletin and no adjustment has yet been made to accommodate that. However, IAGCI and several other witnesses recognised that the description in the March 2012 report of circumstances in the Northern Province of Sri Lanka, in particular, and of the operation of the rehabilitation process, was valid and useful.

238. Mr Wright's evidence set out the difficulty which had been experienced by the UKBA in attempting to identify what turned out to be a very small number of individuals among the thirteen HRW cases; only three of them were asylum seekers who had been abused after being returned to Sri Lanka in the relevant period, and one of those had been returned from Germany. FFT and TAG had been uncooperative. The respondent had been unable to take account of the evidence the three NGOs had produced because that would have involved taking it on trust rather than seeking to verify the allegations made.
239. The evidence of Ms Athi-Parkin showed an attempt by some at least of the respondent's casework groups to verify whether the "recent returnees" profile existed and how many cases were succeeding on that basis. It was patchy and at best anecdotal, as her statement acknowledged.
240. Dr Rampton's evidence, both in his role as a consultant commenting on a particular Country of Origin Report (the March 2012 Sri Lanka report) for the IAGCI, and in relation to country conditions generally, was not based on personal experience of Sri Lanka after 2010, his last visit there. In his written report, Dr Rampton stated strongly that IOM monitoring evidence from Sri Lanka should be discounted as tainted by cooperation between the IOM and the GOSL. That was a question of opinion rather than a summary of his sources. Dr Rampton considered that the Tribunal should prefer the evidence of HRW, TAG and FFT to any evidence from Sri Lanka as to what occurred after return.
241. We accept the evidence of Dr Rampton where it is sourced or corroborated. We accept that he has concerns as to the sources used by the respondent in preparing her Country of Origin information but that, in general, he considers it a helpful and balanced view of post-conflict Sri Lanka. We do have concerns about the parts of his evidence which rely on undisclosed sources and un-minuted Skype conversations. Dr Rampton himself has no recent experience of the conditions in Sri Lanka since he has not been there since shortly after the end of the civil war, in 2010.
242. Professor Rodley has great faith in FFT, whose Board of Trustees he chairs. So far as individual medico legal reports are concerned, in general we share his confidence. FFT's country reports are based on the extracting of information from the MLRs prepared on individual cases. We need to assess in this determination whether they should be given the same weight which we usually give to the MLRs themselves, when prepared to the Istanbul Protocol standard.
243. Professor Rodley's knowledge of Ms Pettitt's research was limited and on many occasions he referred us to her evidence for points of detail. He considered that a court or tribunal attempting to assess torture evidence was much less well placed than a trained clinician and that, therefore, there was no need for the Tribunal to be able to investigate or analyse the FFT research, which should be accepted at face value. We respectfully disagree; it is our task to do precisely that and Professor Rodley's evidence did not allay our serious concerns about the reliability and research methods adopted in preparation of the composite FFT reports.

244. Ms Pettitt's research evidence is set out in Appendix E. The sample underlying it is relatively small and consists of persons whose evidence was found reliable by FFT. It focuses on the harm suffered by the individuals, rather than upon the surrounding factual matrices or their personal backgrounds. Her evidence to the Tribunal was hampered by FFT's very strong commitment to anonymity, well beyond simple redaction of names and places, which has made it difficult to assess the weight the evidence in the sample group and the conclusions which she drew therefrom could properly bear.
245. Another difficulty is that we have seen no similar evidence as to individuals whose torture accounts were rejected by FFT. The FFT evidence goes no further than establishing that some returnees have been ill-treated, some of them with serious and permanent consequences. We have not seen the underlying medico legal reports which would give the level of detail which we have come to expect from the Medical Foundation (now FFT) and to which in general both the respondent and the Tribunal have for many years given weight.
246. We consider that in the light of the extreme redaction of the FFT composite report information, and absent any opportunity to examine the underlying MLRs, we are unable to give the same weight to the composite reports as normally given to FFT medico-legal reports. We are not satisfied that the methodology used is sufficiently robust or the sample either representative or statistically significant, but we take into account the limited evidence which the report provides of certain individuals for whom FFT is said to have prepared MLRs indicating that they had been ill-treated after returning to Sri Lanka.
247. Mr Brad Adams of HRW was unwilling to give evidence at short notice and the parties indicated that they did not wish to cross-examine him. It is clear from the two witness statements prepared by Mr Adams in March 2013 that HRW released reports close to known dates for charter flights in May and September 2012. The same happened with the February 26, 2013 report. Mr Adams says in both statements that the February 2013 report was timed for the UN Human Rights Council session, but absent the opportunity to hear Mr Adams on the point, we are not satisfied as to his explanation. The Human Rights Council session dates do not support that explanation, since the session began the day before the report was published, although it was in an advanced draft some three weeks earlier.
248. The Human Rights Council's consideration of the HRW evidence on Sri Lanka was timetabled for 20 March 2013, almost a month after the report was published, and we remind ourselves that Ms Hogg was aware, on 8 February 2013, that it was likely to be published around the 28 February (the date of the charter flight). We are not satisfied, overall, that the timing of the report was primarily linked to the Human Rights Council's consideration of its contents: we consider that, in common with the 2012 reports, the timing of its publication was intended, at least in part, to influence the February flight and provide material for applications for judicial review.
249. The Upper Tribunal was concerned about the position in which Ms Charu Lata Hogg was placed: when she gave evidence on 8 February 2013, she was aware that the HRW

report was in an advanced draft, which she had seen. She knew that it would be issued on or about 28 February 2013 (the day of the next intended charter flight) but considered that the terms of her consultancy did not permit her to reveal details of the information underlying her report before its scheduled publication. Even after the report's release, the level of redaction and voluntary constraint in Ms Hogg's evidence was such that we were, again, forced to choose whether to simply take her evidence at face value.

250. Ms Hogg told us that she had examined evidence from medical practitioners, hospitals and solicitors, and in most cases, asylum interviews, records, and determinations in order to draw her conclusions. HRW had decided that the redaction of facts should include non-disclosure of all names of United Kingdom doctors who prepared MLRs on the individuals Ms Hogg interviewed. The redaction of any identification of the doctors had been HRW's decision, not that of Ms Hogg.
251. Ms Hogg was unable to disclose any personal details; she did not know what had happened to the 13 victims in the September 2012 HRW report; she could not assist us as to the election breakdowns on ethnic grounds in the 2010 elections. She was able to give her opinion that the issue of Tamil separatism was kept alive in the diaspora and there was a feeling of discontent and nostalgia for the LTTE, though perhaps not to the extent of an appetite for renewed violence.
252. We understand the restrictions placed on Ms Hogg, who as a Chatham House researcher naturally takes them very seriously. However, the outcome of these restrictions is that there is no means of our assessing whether an adequate analysis of the underlying material was made.
253. We note that the individuals whose difficulties are dealt with in Ms Hogg's research all had close personal, and often also familial, connections to the LTTE and, mostly, diaspora activities likely to bring them to notice. We note too that like all the other witnesses, Ms Hogg considered that the LTTE within Sri Lanka was a spent force with any risk to the GOSL now coming from the active sections of the diaspora.
254. Ms Jan Jananayagam is the moving force behind TAG and TAG (Europe), which prepared the "Returnees at Risk"¹⁷ report. She dedicated a year of her professional life (her career and qualifications are in finance) to supervision of the production of that report. We note that all three of the NGOs, TAG, HRW and FFT were seeking independently to prepare reports on the changed circumstances in Sri Lanka and that the TAG researcher had not been given access to failed asylum seekers because their names had been passed to the HRW researcher on an exclusive basis, such that those cases were not available for TAG to use in its research. Ms Jananayagam considered that this probably explained the predominance of students in the "recent returnees" considered in the TAG report.
255. Ms Jananayagam recognised that the sample group was very small and was distorted by its origins; contrary to Ms Jegarajah's submissions, it was not her case that the

¹⁷ 'Returnees at Risk: Detention and Torture in Sri Lanka' report published by TAG in September 2012.

sample group was representative or statistically significant. TAG's researcher had focused on accounts given by Tamil asylum seekers abroad, and did not seek information from Tamils still within the country. There was little information coming out of Sri Lanka now and she could not travel or email there herself without causing difficulty for those she contacted. The media was self-censored due to government scrutiny; the GOSL put out adverse comment on failed asylum seekers. The GOSL monitored emails, telephone conversations, and contacts between Sri Lanka and the diaspora.

256. The LTTE had kept detailed records, while it was the *de facto* government of the Northern Province. She did not think those records were in the hands of the GOSL since it seemed to be expending significant resources on reconstructing them. Some people had LTTE membership cards and identity cards; however, those in civil service and even judicial posts had no need of a membership card. TAG's witnesses did not wish to disclose any war crimes they had seen; if they did admit to having seen them, they asked for confidentiality.
257. We consider that Ms Jananayagam understood well the methodology and value which could be given to the evidence in the TAG report. It is anecdotal and the predominance of student cases may well be a statistical irregularity rather than any element of profile: she did not seek to suggest that it was representative. We take the information there given as indicative rather than representative and give it that weight.
258. The evidence of Mr Keenan of International Crisis Group is in such that little weight can be attached to it. The email has not been printed as it stands; the excerpt has no covering statement of truth to support it; and it is unsigned. Taken at its highest, it is evidence that two people disappeared in Sri Lanka on an unspecified date. It is not, therefore, necessarily evidence of what is happening now.
259. Mr Macrae's evidence is based on journalistic research over the period from late 2009 to date. The information available to Channel 4 at various times is summarised in the two "Sri Lanka's Killing Fields" films in 2011 and 2012, but Mr Macrae has available to him a much wider range of interviews and accounts, which could not be included in the films, by reason both of confidentiality and of time constraints.
260. Mr Macrae interviewed a wide range of people and has obtained graphic footage of war crimes in 2009 during the final conflict. He has not travelled personally to Sri Lanka recently but in the light of the research underlying his films and his evidence, we are nevertheless able to give weight to his analysis of the situation in the No-Fire Zone in 2009. Mr Macrae's evidence as to the political situation now is based on interviews conducted with the help of modern technology with people both within and without Sri Lanka, and in addition, the security assessment of the risk to Channel 4 staff if they were to return to Colombo.
261. We note that the team checked the footage used both with the UN and with independent assessors to check whether it was manipulated. We also note that on 24 October 2011, OFCOM published a report holding that Channel 4 had complied with its obligations and that the report been presented in a balanced manner, with due regard to the graphic nature of the images and the serious nature of the allegations

contained therein. His reports all focus on the events in May 2009, the concerns of the international community and UNHCR in particular, and the failure of that community or the GOSL to address what happened. Their focus is not the profile now for returnees; we mean that as no criticism of their journalistic force.

262. Professor Good's evidence is set out in Appendix I to this determination. He was last in Sri Lanka in 2010. His subsequent information is derived from students and a Professor of Social Anthropology at his former university and we do not, therefore, rely on his report for the details it gives of airport procedures nowadays. We accept his evidence as to the current high levels of bribery and corruption in Sri Lanka and matters which may be ascertained from the press reports and other public information. When pressed on areas of more difficulty, in many cases Professor Good was unable to assist as his information was not up to date.
263. Professor Good suggested two additional risk categories: (a) Those involved in demonstration against the GOSL whilst overseas and (b) Those involved in independent media or human rights activities critical of the Government of Sri Lanka. We consider that these proposed risk groups have relevance in analysing the post-conflict risk, the demonstration group being relevant only to the extent to which it will cause a person to be perceived as seeking to destabilise the GOSL and work for the resurgence of the LTTE or a similar Tamil separatist organisation. In relation to (b), that risk group is agreed to exist by the respondent and is plain from the material before us that there is a real risk of persecution or serious harm for journalists critical of the government in Sri Lanka, whether foreign or local.
264. Dr Smith's evidence is set out at Appendix J. It is based on more recent personal knowledge; he had visited Sri Lanka as recently as December 2012 in order to prepare to give his evidence in these appeals. His evidence is supportive of the other evidence before us as to militarisation of the Northern Province, and the process of return to Sri Lanka with the disclosure of personal circumstances which that involves. Dr Smith considered that the 12 LP/TK factors remained valid but also broadly approved the risk categories identified in the UNHCR guidelines of December 2012.
265. Dr Smith considered that four additional issues would increase risk now: (a) the lack of an ID card, with the need to travel to one's place of origin through checkpoints to obtain a new card likely leading to detention; (b) the presence of an LTTE inspired tattoo on a person; (c) identification as having protested against the Sri Lankan government whilst outside Sri Lanka; and (d) having a mental health issue, with those with mental health issues being heavily stigmatised in Sri Lanka.
266. In relation to factor (a), our judgment is that the weight of the evidence before us does not support a finding that returnees will be in difficulty during travel to their home areas to refresh their Sri Lankan documents, in particular their identity cards. 100,000 Tamils were without identity cards at the end of the civil war. Returnees will have given their onward address at the airport, will have contact details for the BHC in Colombo, and are, to some extent, monitored by IOM in their home areas. They will be travelling on a TTD if they have no other document. There are fewer checkpoints and

those operating them will know the CID or police check all returnees shortly after they reach the home area, and that those on a “stop” list would not pass the airport.

267. As regards (b), there was only one case in the press reports in which a person with an LTTE tattoo came to harm. A tattoo is a form of scarring; Dr Smith’s evidence was that scarring was relevant only when a person was detained for other reasons, when they would be stripped to their underwear during interrogation and scarring might increase suspicion. We do not consider that there is sufficient evidence to support having an LTTE tattoo as a risk factor.
268. We consider that Dr Smith’s factor (c) has relevance, in circumstances where the GOSL has reason to consider that a person has significant involvement in diaspora activities which may unsettle the situation in Sri Lanka and lead either to the resurgence of the LTTE or a similar militia, or to the revival of the internal conflict.
269. As regards the mental health question, Dr Smith was the only witness to suggest that having a mental health issue is a risk factor for persecution, in the context of the third appellant, who does have mental health problems. The research upon which he relied consisted of an abstract from a paper in the journal *Social Psychiatry and Psychiatric Epidemiology* entitled “Sri Lankan doctors’ and medical undergraduates’ attitudes towards mental illness”. The conclusions appear to have been taken out of context and the full paper has not been examined. The summary of the results, not set out in his opinion, was as follows:
- “Results**
The study revealed higher levels of stigma towards patients with depression, alcohol and drug addiction in this Sri Lankan sample compared to UK data but attitudes towards schizophrenia were less stigmatized in Sri Lanka. Blaming attitudes were consistently high across diagnoses in the Sri Lankan sample. Sri Lankan medical students displayed more negative attitudes than doctors ($P < 0.001$). Overall stigma was greatest towards patients with drug addiction, followed by, alcohol addiction, schizophrenia, depression, panic disorder and dementia.”
270. The abstract suggests that medical students may lack understanding of mental health problems and should meet recovered patients, to change their approach; but it also suggests that doctors, as opposed to students, have a more nuanced approach.
271. Paragraph 132 of Dr Smith’s opinion is based on research published in 2001, before the tsunami; his opinion is also informed by conversations he has had in which he suggests that the mentally ill are considered to be “possessed”. We do not consider that “mental health” should now be an additional risk factor for persecution or serious harm, although, on a case by case basis and applying Article 8 ECHR, the private and family life rights of individuals with mental health issues may be determinative of their appeals.
272. Nor are we satisfied that the evidence on identity cards is as stark as Dr Smith suggests, given that charter flight returnees in particular travel back on documents provided by the GOSL and are permitted, once interviewed, to return to their home areas, where they will be able to replace any documents which are missing. Identity

checks will already have been made. We do not consider, therefore, that this risk is distinct from the new risk of being perceived as a person seeking to destabilise the GOSL by actively working for resurgence of the Tamil conflict.

273. Professor Gunaratna is an insider in relation to the GOSL and his views are interesting as a reflection of its mindset. He helped to design and assess the rehabilitation programme, although his evidence lacks specifics as to its operation. We accept his evidence that the government's concerns are now with the diaspora and that the LTTE within Sri Lanka is a spent force at present. We also accept his evidence that the GOSL is more selective now as to who requires rehabilitation in the present climate.
274. Mr Saravanamuttu's evidence was in written form only. He is the Executive Director of the Centre for Policy Alternatives in Colombo; he has a prominent international human rights profile and in 2009 received a death threat and was detained at Colombo airport by the TID. He has been and remains a subject of hostile comment within Sri Lanka for his views. This year there has been a poster campaign against him. In his report, Mr Saravanamuttu declined to engage with all of the questions asked of him, citing "time pressures". He deals only with the situation in the former LTTE areas, and the political situation in Sri Lanka since the civil war ended. His report is mainly a collection of quotations from other material, with little of his own opinion. Since we did not hear oral evidence from Mr Saravanamuttu we can place only limited weight on his evidence but where it supports the other evidence, we have taken it into account.
275. Mr Anton Punethanayagam's evidence is that of a practitioner who has dealt with 3000 cases of detainees, in Colombo and Vavuniya. His evidence on the process of bribery was particularly useful. We did not have the opportunity of hearing him give oral evidence, and some of his evidence goes beyond what he can be taken to know himself but where his evidence concerns the criminal processes in Sri Lanka, we consider that it is useful and reliable. We take particular account of his view that the seriousness of any charges against an individual are not determinative of whether a bribe can be paid, and that it is possible to leave through the airport even when a person is being actively sought.
276. Dr Suthaharan Nadarajah of SOAS was asked by the United Kingdom government last year to brief the Independent Reviewer on Terrorism Legislation on the effectiveness of proscribing organisations and the effect of such proscription on civil society. Like many witnesses, he considered that the GOSL was vexed by activities in the diaspora but that it was aware that many failed asylum seekers were economic migrants. His views on the effectiveness of the President's new Human Rights Commission are strongly expressed; his expertise is terrorism and he has not researched the position of returned asylum seekers. His explanation of the Martyrs Day, Heroes Day and Tamil Uprising were helpful; his evidence as to what happens in Sri Lanka now is derived from telephone conversations, Skype, internet exchanges and discussions with visiting journalists, since he has not been to Sri Lanka himself for ten years.

277. The press reports are generally supportive of the views of all the experts. They add nothing particular to the other evidence before us, save for the Indian publication *Economic and Political Weekly*, which analysed the high levels of militarisation in the Northern Province in striking terms, putting it in context with the behaviour of the LTTE and the fears of the GOSL. That analysis of the level of penetration of the Northern Province and the GOSL and local population's approach to security is supportive both of the other evidence of militarisation and of the indications that the LTTE within Sri Lanka is a spent force. The GOSL is looking abroad to the diaspora and its activities for any present risk of resurgence or of the conflict resuming within the country.

Confidentiality and the public reports

278. It is both unfortunate and unhelpful that the concerns expressed by FFT and HRW as to confidentiality are so extensive that they are unwilling to cooperate in enabling the respondent to verify from her own database the examples on which they rely. As a result, information which could usefully have informed the assessment of risk by the respondent and thus altered the course of a number of individual assessments was deprived of the weight it could have gained from cross referencing the respondent's files.

279. The position in relation to Ms Hogg's evidence was particularly unfortunate. Ms Hogg was tendered as a witness for the third appellant, but was so tightly constrained by confidentiality provisions imposed upon her by HRW (even to the extent of not being permitted to acknowledge them as her employer) that there was hardly any point in her giving oral evidence at all before the report was published. We have treated her as effectively a witness for HRW.

280. We have considered Mr Adams' written evidence; we are unable to accept his evidence that the timing of the February 2013 report was unrelated to the proposed flight on 28 February 2013. Had we had the opportunity to hear from him, we might have been able to place more weight on his evidence but, save where it is otherwise corroborated, we do not feel able to do so.

Timing of flights and reports

281. It seems clear that both the UKBA and the NGOs (HRW, TAG and FFT) endeavour to produce new evidence close to the time of proposed charter flights. We were particularly troubled to note that on at least two occasions, HRW had timed reports for a day or two before a flight, whereas, at least in the case of the February 26 report to which Ms Hogg contributed, the advanced draft of that report had been settled early in February 2013. It is wasteful of resources to produce evidence just a day or two before a flight, giving rise to multiple judicial review applications, when the facts contained in the report could have been considered properly over a period of several weeks, enabling the respondent to refine her assessment of whether particular individuals should be removed.

282. The respondent did not distinguish herself in this respect either: in relation to the February 2013 flight, when the dates were first mentioned in court she maintained

that they were confidential and that the Tribunal should not be made aware of the date of the proposed flight. The flight dates were known to the representatives since a good many of their other Tamil clients had been given letters telling them they were to be removed on that date.

283. Arrangements for the flight had commenced at the end of 2012 and had not been halted or stayed pending the wide-ranging assessment which the respondent knew was planned for early February 2013. The initial hearings took place over the first week of February and it was most unlikely, given the vast number of documents and witnesses, that a country guidance decision would appear by the end of February.
284. In *Hamid, R (on the application of) v Secretary of State for the Home Department* [2012] EWHC 3070, the President of the Queen's Bench Division, Sir John Thomas, giving the judgment of the court, deplored last minute applications by claimants in the following terms:

"2. This court, because of a very substantial number of such claims, has now revised its form N463. First the form requires in section 1 that the reasons for urgency be stated. Secondly, it requires in section 2 the appellant to state the timetable in which the matter should be heard. Third, it requires the justification for immediate consideration to be given. In particular it requires the date and time when it was first appreciated that an immediate application might be necessary and, if there have been any delays, the reasons are to be stated. Also the form requires any efforts that have been made to put the defendant and any interested party on notice to be set out.

3. The form was revised because the Administrative Court faces an ever increasing large volume of applications in respect of pending removals said to require immediate consideration. Many are filed towards the end of the working day, often on the day of the flight or the evening before a morning flight. In many of these applications the person concerned has known for some time, at least a matter of days, of his removal. Many of these cases are totally without merit. The court infers that in many cases applications are left to the last moment in the hope that it will result in a deferral of the removal.

4. The Court of Appeal in *R (Madan) v Secretary of State for the Home Department* [2007] 1 WLR 2891 set out in the judgment given by Buxton LJ a number of principles that must be taken into account by legal advisers on attempts to obtain judicial review of removal decisions: see paragraph 17 and in particular the following sub-paragraphs:

"i) CPR PD 54.18 makes provision for the hearing of judicial review applications in the Administrative Court against removal from the jurisdiction. Such applications must be made promptly on the intimation of a deportation decision, and not await the actual fixing of removal arrangements.

ii) The detailed statement required by PD 18.2(c) must include a statement of all previous applications made in respect of the applicant's immigration status, and indicate how the present state of the case differs from previous applications.

iii) Counsel or solicitors attending *ex parte* before the judge in the Administrative Court are under professional obligations (a) to draw the judge's attention to any matter adverse to their clients' case, including in particular any previous adverse decisions; and (b) to take a full note of the judge's judgment or reasons, which should then be submitted to the judge for approval. ...

viii) Counsel will remember that where the application is made *ex parte* there is a particular obligation to draw the court's attention to relevant authority, including in particular Country Guidance cases."

As Buxton LJ pointed out at paragraph 8, there are circumstances in which professional misconduct can arise if an application is made with the view to postponing the implementation of a previous decision where there are no proper grounds for so doing."

285. The practice which developed in 2012 among NGOs such as HRW, FFT and TAG, of producing press releases very shortly before a flight, followed by large numbers of last-minute applications for injunctions and judicial review, falls foul of the *Hamid* principle. The late production of publicly published new material from the NGOs removes any opportunity for the respondent to deal with it in a timely fashion (to the extent that it is really new, rather than a reframing of earlier material). It also removes any opportunity for the respondent to examine individual cases and decide, if appropriate, not to remove those individuals, without the need for emergency injunction applications at significant expense, both to the individuals concerned and the public purse. On the occasions where a charter flight has been cancelled, that also entails significant public expense.
286. In the present case, several of the representatives at the hearing on 6 February 2013 had seen removal letters for the charter flight on 28 February 2013, sent the previous week (that is to say, in late January or very early February). We were told that the flight itself would have been arranged in early January 2013. There was thus more than sufficient time for applications for judicial review to be made 'promptly' as the Rules require. We do not know whether 'prompt' applications had been made in respect of those particular claimants, since their names and other details were not relevant in the present proceedings and were not disclosed.
287. However, to the extent that the claimants and those representing them were aware that the HRW reports, and possibly the FFT and TAG reports, were being timed to coincide with the charter flights, were this to occur again, they are reminded of the guidance given as to the necessity to make an application for judicial review 'promptly' as set out in the *Hamid* judgment.

UNHCR guidelines

288. Revised UNHCR Guidelines issued on 21 December 2012 reflect the post-conflict changes in Sri Lanka now and, in common with our own country guidance, have not been reviewed since very soon after the end of the conflict. The previous UNHCR Guidelines were issued in July 2010. The Preamble to the present document sets out the need for new guidelines:

“These Guidelines ... are issued against the backdrop of the current situation in The Democratic Socialist Republic of Sri Lanka (hereafter Sri Lanka), where ongoing human rights concerns are reported, including in particular with regard to reports of post-conflict justice, torture and mistreatment, disappearances, arbitrary detention and freedom of expression.

UNHCR’s recommendations, as set out in these Guidelines, are summarized below.

All claims lodged by Sri Lankan asylum-seekers, whether on the basis of the refugee criteria contained in the 1951 Convention, or complementary forms of protection based on human rights obligations, need to be considered on their own merits according to fair and efficient status determination procedures and up-to-date and relevant country of origin information. More specifically, the possible risks facing individuals with the profiles outlined below require particularly careful examination. UNHCR considers that individuals with these profiles – though this list is not exhaustive – may be, and in some cases are likely to be in need of international refugee protection, depending on the individual circumstances of their case.”

289. The list of groups requiring ‘particularly careful examination’ who may be, and in some cases are likely to be, in need of international protection was as follows:

- “(i) persons suspected of certain links with the Liberation Tigers of Tamil Eelam (LTTE);
- (ii) certain opposition politicians and political activists;
- (iii) certain journalists and other media professionals;
- (iv) certain human rights activists;
- (v) certain witnesses of human rights violations and victims of human rights violations seeking justice;
- (vi) women in certain circumstances;
- (vii) children in certain circumstances; and
- (viii) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals in certain circumstances.”

The evidence which we have received relates to the first five subheads in particular. Mr Hall accepted that those who were detained were likely to be ill-treated and the evidence suggests that, for both sexes, that ill-treatment sometimes includes sexual abuse. We have not been taken to evidence relating to children or to LGBTI individuals and the guidance in this determination does not, therefore, deal separately with women, children, or LGBTI individuals.

290. We have considered the passage on page 27 of the UNHCR Guidelines relied upon by Miss Jegarajah: with respect, we disagree with her assessment that it asserts that any former links with the LTTE are determinative of an asylum claim today. The relevant passage begins on page 26 and reads as follows:

“A. Risk Profiles

A.1 Persons Suspected of Certain Links with the Liberation Tigers of Tamil Eelam (LTTE)

At the height of its influence in Sri Lanka in 2000-2001, the LTTE controlled and administered 76% of what are now the Northern and Eastern Provinces. Therefore, all persons living in those areas, and at the outer fringes of the areas under LTTE control,

necessarily had contact with the LTTE and its civilian administration in their daily lives. Originating from an area that was previously controlled by the LTTE does not in itself result in a need for international refugee protection in the sense of the 1951 Convention and its 1967 Protocol.

However, previous (real or perceived) links that go beyond prior residency within an area controlled by the LTTE continue to expose individuals to treatment *which may give rise to a need for international refugee protection, depending on the specifics of the individual case*. The nature of these more elaborate links to the LTTE can vary, but may include people with the following profiles:

- 1) Persons who held senior positions with considerable authority in the LTTE civilian administration, when the LTTE was in control of large parts of what are now the Northern and Eastern Provinces;
- 2) Former LTTE combatants or “cadres”;
- 3) Former LTTE combatants or “cadres” who, due to injury or other reason, were employed by the LTTE in functions within the administration, intelligence, “computer branch” or media (newspaper and radio);
- 4) Former LTTE supporters who may never have undergone military training, but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE;
- 5) LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan diaspora that provided funding and other support to the LTTE;
- 6) Persons with family links or who are dependent on or otherwise closely related to persons with the above profiles.

When assessing claims of persons with the profiles above, it may, depending on the individual circumstances of the claim, be important to examine the applicability of the exclusion clauses. ...” *[Emphasis added]*

The effect of that passage is that these categories remain fact-specific. We shall set out later, in the light of the wide-ranging expertise we have heard and read, what we consider to be the fact-specific risk groups, some of which overlap with the general categories set out in the UNHCR guidelines generally and at paragraph A.1 in particular.

291. The UNHCR Guidelines do not suggest that in the unitary Sinhalese Sri Lankan state any internal relocation option exists for those for whom the persecution feared emanates from the state, given the broad reach of the security apparatus and the small size of the country¹⁸.

“UNHCR considers that an internal flight or relocation alternative is not available in Sri Lanka in cases where the feared persecution emanates from the state itself or elements associated with it. Given the small size of the country, coupled with the broad reach of the security apparatus, the effective territorial control maintained by the Sri Lankan Army (SLA) since the end of the armed conflict, the “relevance” criterion of the internal flight or relocation alternative test would not be met in such cases.”

¹⁸ Sri Lanka has a land mass of 25,332 square miles with a population of 20.8 million, of whom just over 15 million are Sinhalese.

292. Again that accords with the weight of the evidence before us. UNHCR nevertheless considers that relocation may be available where the fear is of non-state agents:

“An internal flight or relocation alternative may be available in cases where the feared persecution emanates from non-state agents. In instances where an internal relocation option would be relevant, it may nevertheless not be reasonable, depending on the circumstances of the individual case. Serious social and economic challenges remain in areas previously affected by armed conflict, where livelihood opportunities are extremely limited.”

293. In the light of human rights abuses on all sides during the conflict, UNHCR identifies a list of categories where the exclusion provisions of the Refugee Convention under Article 1F may be engaged:

- “(i) Certain (former) Government officials, including in functions with responsibilities relating to the conduct of war during the final phases of the conflict, and those posted in the conflict-affected areas during the final phase of the conflict;
- (ii) Certain (former) members of the Sri Lankan Army and other security forces;
- (iii) Certain (former) members of the Sri Lanka Police Service (SLPS), including the Criminal Investigation Division (CID), the Terrorist Investigation Department (TID), and the Special Task Force (STF);
- (iv) Certain former members of the LTTE, in particular former combatants;
- (v) Certain (former) members of the ‘Tamil Makkal Viduthali Pulikal’ (TMVP), including the Karuna faction and the Inya Barathi Group;
- (vi) Certain (former) members of the Eelam People’s Democratic Party (EPDP);
- (vii) Certain (former) members of the People’s Liberation Organisation of Tamil Eelam (PLOTE); and
- (viii) Certain (former) members of other pro- and anti-government militias and paramilitary groups.”

Decision makers (including judges) dealing with returns to Sri Lanka must be alive to the possibility that exclusion, both under Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive, may apply, whether raised by the parties or not.

294. On 19 March 2013, the UN General Assembly adopted a resolution, recognising the efforts made by the Sri Lankan authorities following the LLRC report, but criticising implementation of the LLRC recommendations as inadequate and calling for action on human rights. A Sri Lankan government representative spoke in the debate: the GOSL’s position throughout has been that no war crimes were committed and that any international perception to the contrary is a worldwide pro-LTTE conspiracy and completely untrue.

General situation in Sri Lanka

295. We now set out our general findings as to recent events and the present situation in Sri Lanka, before dealing with certain specific points raised by the parties and TAG.

296. The Sri Lankan civil war ended in May 2009, with the Eastern Province having returned to government control in 2007. The Sri Lankan government regained control of the Northern Province-east of Sri Lanka in 2007. In the closing days of the

civil war, Tamils were encouraged to make use of No-Fire Zones in north-eastern Sri Lanka and about 350,000 did so. International observers, journalists and most aid groups were asked to leave the conflict zone. Explosions and shelling in the three successive No-Fire Zones, including field hospitals, caused many deaths. Supplies of both food and water were inadequate, particularly in the third, smallest no-fire zone used at the very end of the civil war.

297. The LTTE was crushed and within Sri Lanka is now a spent force. There have been no terrorist incidents at all since May 2009. The GOSL has control of the whole country and internal relocation is not an option if the security forces have an adverse interest in an individual, since there are no LTTE areas where an individual may be safe. At the end of the civil war, about 160,000 Tamils were unaccounted for, but as in any conflict zone, there are real difficulties in establishing how reliable any such statistics may be. Estimates of deaths in the No-Fire Zones range between about 10,000 and 70,000. The Sri Lankan government has consistently blamed the LTTE for the deaths, while the Tamil community attributes the deaths to government actions. A fuller consideration of these events is for other bodies who will have far more comprehensive evidence to consider.
298. At the end of the civil war, all Tamils (300,000 approximately) were required to go to IDP camps in the Vavuniya area, of which the largest was Menik Farm. They were required to remain there while the GOSL identified 11,000 LTTE cadres and supporters considered to require re-education ("rehabilitation") before returning to Sri Lankan civil society. The rehabilitation camps were separate from the IDP camps. People were encouraged to identify themselves if they had spent 'even one day with the Tigers'.
299. The legal basis of detention of the 11,000 former LTTE cadres is unclear. There is no statutory provision for the rehabilitation process. They were detained and re-educated for a minimum period of two years (some have been detained as long as four years) without any judicial supervision. It does not appear that physical harm was part of the rehabilitation programme, but other than that, details of the programme are scarce.
300. Those being rehabilitated were taught the Sinhala language and may have been taught civilian occupations: the civil war had lasted 25 years and many of the younger cadres may never have had a peacetime occupation. 10,500 rehabilitated LTTE cadres have been released; they are subject to monitoring, residence, and reporting conditions in their home areas. Only a dozen or so of those rehabilitated have returned to ordinary crime and none are known to have returned to terrorism.
301. In Presidential and Parliamentary elections in 2010, Mahinda Rajapaksa of the United People's Freedom Alliance was re-elected President with an overwhelming majority. His party obtained 144 seats (national and local). Parties representing Tamils won just 14 seats. The Defence Secretary, Gotabaya Rajapaksa, the Cabinet Minister of Economic Development, Basil Rajapaksa, and the Speaker of the Sri Lankan Parliament, Chamal Rajapaksa, as well as a number of other political figures are

members of the same family. It is said that the Rajapaksa family controls 75% of the national budget and has 200 members in civil service posts.

302. In May 2010, the Sri Lankan government established a Lessons Learned and Reconciliation Commission (LLRC), mandated to inquire and report on matters 'that may have taken place during the period between 21 February 2002 and 19 May 2009. The LLRC's report was delivered to President Rajapaksa on 15 November 2011 and made public on 16 December 2011. Many of its recommendations have not yet been implemented. On 19 March 2013, the UN General Assembly's concerns as to the slow implementation of the recommendations. On March 24 2013, the Sri Lankan government (GOSL) stated publicly that it expected to meet the UN-imposed deadline for implementation of all recommendations by March 2014.
303. The GOSL is reasonably confident that there is a low risk of resurgence of the internal armed conflict from within Sri Lanka. Its concern is with the risk of resurgence coming from the diaspora, of which London, Paris, Toronto and Oslo are major centres ('the diaspora hotspots'). There are approximately one million Tamils outside Sri Lanka, mostly in the diaspora hotspots.
304. All the IDP camps established in 2009 (in particular Menik Farm) have now closed, although some are still occupied by Tamils who cannot yet return home. However, despite some reconstruction of the infrastructure in the Northern and Eastern Provinces, conditions for approximately 200,000 Tamils returning to their homes in the former Tamil areas remain difficult. In the Northern Province, returning IDPs have difficulty in accessing their lands and businesses, and employment is scarce. High Security Zones (HSZs) identified for de-mining cover large areas of the Northern Province, are closed to non-military personnel and remain unavailable to those who lived there before the civil war.
305. The Northern Province is heavily militarised. The GOSL has increased the size and budget for its army and there is now one soldier for every five members of the population in the Northern Province. Permanent army barracks are being constructed. The army operates civilian businesses, hotels, restaurants, farms, shops and tourism and employment for returning Tamils is scarce. The infrastructure is being gradually restored but the GOSL intends that the area shall not be considered a Tamil area. Cash incentives equivalent to several hundred pounds at today's rates are available for Sinhalese soldiers who settle in the Northern Province and have a third child. Street names are being changed and other cultural markers are being replaced. The President says it is no longer a "mainly Tamil area".
306. President Rajapaksa has stated repeatedly that the GOSL's approach to security is now intelligence-led. The security services debriefed thousands of Tamils at the end of the civil war and the GOSL has available to it sophisticated, high quality intelligence, enabling it to evaluate and assess the risk posed by particular individuals both within and without Sri Lanka.
307. Sri Lankans returning without a Sri Lankan passport will require an Emergency Travel Document for which they need to apply at the SLHC in London. Full disclosure of all relevant identity information is given in the process of obtaining a

TTD. An applicant completes a lengthy disclosure form and is then interviewed at the Sri Lankan High Commission in London; the information received is sent to the Ministry of External Affairs and the Department of Immigration and Emigration in Colombo. Files are created and records verified; if the authorities agree to issue a TTD, the MEA in Colombo emails the document to the Sri Lankan High Commission in London where the TTD is stamped, a photograph added, and issued to the applicant.

308. During the re-documentation process in the United Kingdom, or at the airport on return, a forced returnee can expect to be asked about his own and his family's LTTE connections and sympathies.
309. Those with Sri Lankan passports returning on scheduled flights will be able to walk through Colombo airport without difficulty, unless their names are on a "stop" list, by reason of an outstanding Court order or arrest warrant. Those on a "watch" list are not stopped at the airport but will be monitored and if considered to be a destabilisation risk, may be picked up from their home area.
310. There are no detention facilities at the airport. Although individuals may be interviewed at the airport by the security forces, the Sri Lankan authorities now aim to move returnees relatively quickly out of the airport and on their way to their home areas and to verify whether they have arrived there soon afterward. If the authorities have an adverse interest in an individual, he will be picked up at home, not at the airport, unless there is a "stop" notice on the airport computer system. There is no evidence that strip searches occur at the airport; the GOSL's approach is intelligence-led rather than being driven by roundups and checkpoints as it was during the civil war.
311. The LTTE was the *de facto* government of large areas of Sri Lanka during the conflict and all residents of those areas at times of LTTE governance would have LTTE connections. The majority of the examples which the parties produced of those who were ill-treated on return, were of persons who had significant LTTE links (whether direct or familial). The evidence is that although LTTE cadres were screened out and rehabilitated in May 2009, the government's concern now is not with past membership or sympathy, but with whether a person is a destabilising threat in post-conflict Sri Lanka.
312. Individuals returned on TTDs without a Sri Lankan identity card may need to go back to their home area in Sri Lanka to replace it, obtaining a certificate from their Grama Sevaka. The certificate must be obtained in person and they may be stopped at checkpoints during the journey. The checkpoints are not linked to the security services or the computer system.

Particular issues:

313. The appellants advanced a range of risk profiles: for TAG and the first appellant, Miss Jegarajah argued that any Tamil returning to Sri Lanka was at risk. Mr Mackenzie and Mr Spurling did not go as far as that: both adopted a more nuanced position, as is also found in the UNHCR Guidelines. Mr Hall recognised that there

would have to be some changes to the categories or factors in the previous country guidance: that was to be expected, given that all of the previous determinations were based on the situation either during or shortly after the end of a brutal civil war.

314. We examine the factual position today to see what guidance is appropriate. We do not underestimate the losses suffered by the Tamils at the end of the civil war. We make the following factual findings on the basis of all the evidence before us.

No-Fire Zones

315. Between 40,000 and 100,000 Tamil civilians died in government-designated NFZs in the final days of the civil war in May 2009. There were three successive NFZs, progressively smaller and moving further east. Supplies of both food and water in the NFZs were inadequate. Shelling of the field hospital at Mullaivaikkal caused many deaths. The GOSL has consistently blamed the LTTE for the deaths; the Tamil community attributes the deaths to the actions of the GOSL. The GOSL continues to describe this a period when they were seeking 'humanitarian' protection of those in the NFZs, but its account is overwhelmingly rejected in the material we have seen, in particular in the "Sri Lanka's Killing Fields" series.

Rehabilitation

316. The "rehabilitation" programme was designed by the Sri Lankan government to re-educate former LTTE cadres, who may never have known peace, and enable them to return to the community as ordinary citizens. The best evidence on this should have been that of Professor Gunaratna, who helped design the programme, but in fact, very little information was provided by him or anyone else about the operation of the programme. Very little is publicly known of what takes place, save that former fighters are apparently taught the Sinhala language and how to reintegrate into civilian society. There is no allegation that they are physically harmed during rehabilitation, although they are detained for long periods (typically two years) without judicial oversight. The only statutory justification appears to be the detention provisions under the PTA.
317. Those who have been rehabilitated are monitored and are required to report regularly and live in their home areas; the GOSL has confidence that those who have been through rehabilitation are unlikely to return to combat but monitors them closely. The nuisance value, or worse, of such monitoring depends on how it is enforced by the local commander in each area. Professor Gunaratna's evidence was that 11500 of the 12000 originally identified have now been rehabilitated: only 12 have lapsed, into ordinary crime, and none have returned to terrorism or extremism.
318. Professor Gunaratna's opinion, which we accept, is that there has been a qualitative change in the purpose of the rehabilitation programme between 2009 and now. The government's concern now relates to those who may be associated with attempts to destabilise the unitary Sri Lanka by reviving the LTTE within the diaspora. His evidence explained how the Sri Lankan authorities would approach selection of individuals for rehabilitation now: he told us that those within Sri Lanka who undertake high profile separatist activity (such as the Jaffna students trying to

celebrate Maaveerar Naal in November 2011) or who are known or perceived (while still in Sri Lanka) to be seeking contact with the leaders or activists of the resurgence movement in the diaspora hotspots, risk detention or “rehabilitation”.

319. In the light of the above, despite the restrictions on movement, and the reporting conditions which the local commanders impose, we do not consider that post-rehabilitation monitoring alone rises to the level of persecution.

The Rajapaksa government

320. President Mahinda Rajapaksa of the United People’s Freedom Alliance became President in 2005 and was re-elected after post-war Presidential and Parliamentary elections in 2010. His party obtained 144 seats (national and local). Parties representing Tamils won just 14 seats.
321. The Defence Secretary, Gotabaya Rajapaksa, the Cabinet Minister of Economic Development, Basil Rajapaksa, and the Speaker of the Sri Lankan Parliament, Chamal Rajapaksa, as well as a number of other political figures are members of the same family. It is said that the Rajapaksa family controls 75% of the national budget and that approximately 200 members of the Rajapaksa family are employed by the GOSL in the civil service and elsewhere.

Government’s attitude to returning asylum seekers

322. The GOSL has publicly invited the Tamil diaspora to return and take part in the reconstruction of the Northern Province and Sri Lanka after the civil war. However, many of the witnesses stated that they considered this to be in conflict with the GOSL’s reluctance to receive back those who might seek to revive the internal armed conflict or destabilise the unitary Sri Lankan state. Dr Smith's evidence of the intensive screening in the Vanni in 2012 (when the Sri Lankan authorities considered that LTTE activists might have returned there) illustrates the GOSL’s overwhelming concern to ensure that the internal armed conflict never recurs.
323. The Bilateral Readmission Agreement, which we have not seen, clearly provides re-documentation procedures, operated in the SLHC in London and elsewhere, but resulting in a full consideration of whether to supply a TTD to persons claiming to be Sri Lankan nationals. TTDs are issued from the DIE in Colombo by email. We consider it more likely than not that the Sri Lankan authorities can distinguish between those described by Ms Jegarajah as “waging the alternative war” and those who are not involved with attempts to revive the LTTE in the diaspora.
324. President Rajapaksa has stated, and the press reports and experts confirm, that the government has sophisticated intelligence concerning who is contacting the diaspora or seeking to revive the quest for a Tamil homeland. The government’s intelligence includes monitoring of activities online, on mobile phones, and in the diaspora in the four hotspots: London, Paris, Oslo and Toronto. It has informers throughout the Northern and Eastern Provinces, and in the diaspora. It intercepts electronic and telephone communications and closes down websites. Photographs are taken of

demonstrations and the GOSL sponsors an image recognition project at Colombo University.

325. It is not established that previous LTTE connections or sympathies (whether direct or familial), are perceived by the GOSL as indicating now that an individual poses a destabilising threat in post-conflict Sri Lanka; as indicated in the UNCHR Guidelines and in the evidence before us, the extent to which past links predict future adverse interest will always be fact specific, and for those with close links to the LTTE's operations during the war, the exclusion clauses may well be relevant.
326. Many of the witnesses stated that despite official pronouncements that all returning asylum seekers were traitors, the GOSL was aware that many of them were economic migrants. Such returnees would be interviewed at the airport and unless it was established that they had significant diaspora activities, were likely to be allowed to continue to their home areas.

Sinhalisation of Tamil areas

327. At the end of the civil war, Tamils were relocated to camps, pending reconstruction of the conflict-damaged north and east, and also to allow for identification of persons requiring "rehabilitation" before they could rejoin the Sri Lankan community. The camps are only now being closed, some four years later, but many Tamils have lost their businesses and farms to occupying Sinhalese soldiers and others find that their homes, farms and businesses are in high security zones (HSZs), where there is said to be high levels of unexploded ordnance, and inaccessible.
328. The former Tamil areas in the Northern and Eastern Provinces are in effect occupied territory, with one soldier for every five members of the population. Militarisation is particularly heavy in the Northern Province. The Sri Lankan army budget and personnel have been significantly increased every year and the size of the Sri Lankan army now exceeds that of the United Kingdom. HSZs have been designated to which no returns are permissible for the time being and many farmers have not yet been able to return to their land. During the period when the camps were operating, the army has run the shops, businesses, hotels and tourism in the area. Permanent barracks have been constructed and substantial payments made available for soldiers settling in the Northern Province who have at least three children.
329. President Rajapaksa has stated that these areas should not now be described as "Tamil areas": the government's intention appears to be to dilute the Tamil population of those areas by Sinhalisation.

LLRC

330. In May 2010, the Government of Sri Lanka (GOSL) established a Lessons Learned and Reconciliation Commission (LLRC), mandated as follows:

"To inquire and report on the following matters that may have taken place during the period between 21st February, 2002 and 19th May, 2009, namely:

- The facts and circumstances which led to the failure of the ceasefire agreement operationalized on 21st February, 2002 and the sequence of events that followed thereafter up to the 19th of May, 2009.
- Whether any person, group or institution directly or indirectly bear responsibility in this regard;
- The lessons we would learn from those events and their attendant concern, in order to ensure that there will be no recurrence;
- The methodology whereby restitution to any person affected by those events or their dependants or their heirs, can be affected;
- The institutional administrative and legislative measures which need to be taken in order or prevent any recurrence of such concerns in the future, and to promote further national unity and the reconciliation among all communities, and to make any such other recommendations with reference to any of the matters that have been inquired into under the terms of the civil warrant."

331. The LLRC's report was delivered to President Rajapaksa on 15 November 2011 and made public on 16 December 2011. Among other recommendations, it advocated that Tamil rights to celebrate their culture and religion be guaranteed, that there be equal rights for Tamils, that the military be removed immediately from civilian administration in the Northern and Eastern Provinces, and that there be religious freedom in Sri Lanka.
332. The LLRC recommendations, if implemented, should have led to significant improvements for Tamils in Sri Lanka but as at the date of hearing, many of its recommendations had not yet been implemented. The GOSL's public position was that it had invited the return of the Tamil diaspora to rebuild the Northern Province. The GOSL's stance is that it is trying to reconstruct the Northern and Eastern Provinces and should be given time to do so, but that any such reconstruction does not permit recognition of separate Tamil identity at present.
333. There are very few demonstrations within Sri Lanka: Mr Macrae described any sort of political activity within Sri Lanka as 'incredibly dangerous'. The LLRC had recommended that Tamils be allowed to celebrate their community anniversaries and Maaveerar Naal, the Tamil Remembrance Day, was one such. On 27 November 2011, when 40 students in Jaffna lit lamps in celebration of Maaveerar Naal, and many students demonstrated, hundreds were arrested. Most were released, but 45 students were sent for rehabilitation outside Jaffna and may still be detained.
334. On 19 March 2013, the UN General Assembly expressed concerns as to the slow implementation of the LLRC recommendations. On March 24 2013, the GOSL stated publicly that it expected to meet the General Assembly's deadline for implementation of all LLRC recommendations by March 2014, but that seems unlikely to be achieved.

Diaspora activities

335. There are approximately one million Tamils outside Sri Lanka, with diaspora activity hotspots in London, Paris, Oslo and Toronto. In 2010, the exiled Tamil diaspora held worldwide elections and there is now what is described as a government in exile, whose President lives in New York. In London, there have been demonstrations

against both the May 2009 events, and against conditions in Sri Lanka now. President Rajapaksa's visit for the 2012 Olympics was badly affected by demonstrations in London when he arrived. The GOSL continues to criticise vigorously the perceived support by the international community of Tamil diaspora activism abroad.

336. The former Tamil areas and the diaspora are heavily penetrated by the security forces. Photographs are taken of public demonstrations and the GOSL may be using face recognition technology: it is sponsoring a face recognition technology project at the University of Colombo. However, the question which concerns the GOSL is the identification of Tamil activists working for Tamil separatism and to destabilise the unitary Sri Lankan state. We do not consider that attendance at demonstrations in the diaspora alone is sufficient to create a real risk or a reasonable degree of likelihood that a person will attract adverse attention on return to Sri Lanka.
337. Nor do we accept Miss Jegarajah's submission that all Tamils are at risk on return; that was not the evidence of any of the witnesses, nor did the UNHCR go so far. Ms Jananayagam expressly stated that she was not saying that "all Tamils" were at risk. Ms Jegarajah's closing submissions strayed into evidence in places, particularly in relation to her assertion that every Tamil remains passionately committed to Tamil separatism or that all Tamils in London and the United Kingdom are working to continue the conflict outside Sri Lanka now that it cannot be continued within the country.
338. Ms Jananayagam made it quite clear that the risk, in her opinion, was not to "all Tamils" but to certain categories of returning Tamils. We accept that in London there have been demonstrations on important Tamil anniversaries and it is clear that among the London Tamil diaspora in particular, and no doubt also in Paris, Oslo and Toronto, there are committed Tamil activists working for Tamil separatism and to destabilise the unitary Sri Lankan state. The GOSL perceives such individuals as continuing to oppose the Sinhalisation of Sri Lanka as a whole, and the single state approach enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the "violation of territorial integrity" of Sri Lanka.
339. Professor Anthony Good told us that the vast majority of those interned had been released, over 40% of the land area in the Northern Province was now accessible by road, and roads, railways and other infrastructure projects were under way. The banks in Jaffna were reopening. He confirmed the press reports of disappearances, some of which were for political reasons, and some for extortion. The dreaded 'white vans' contained people in civilian clothes, and abductions occurred in Colombo as well as the Northern Province. It sometimes happened that those so abducted later turned up in the Terrorist Investigation Department's hands but using paramilitaries gave the GOSL deniability.
340. The respondent's current guidance relies strongly on the European Court of Human Rights decision in *E.G.* With the greatest of respect to that Court, it was there considering a Tamil whose last experience of detention was in 1996 and who had not left the United Kingdom since 2000. The evidence before the Court ended in 2010.

The European Court of Human Rights in *E.G.* found that return on a TTD did not seem to make any difference to the risk at the airport, which it considered too low to engage international protection. We agree that the risk at the airport is low and none of the parties now contends that to be the principal area of risk, unless a person returned on such a document is on a wanted or watch list.

341. Sri Lanka is no longer a divided state, with LTTE areas to which Tamils can seek to relocate if at risk in the areas controlled by the GOSL. The whole of Sri Lanka is now under the control of the GOSL. The Secretary of State's guidance to caseworkers, and the UNHCR guidelines, both accept that internal relocation will not reduce a risk emanating from GOSL state actors, or non-state actors cooperating with the GOSL.
342. 11,000 former LTTE cadres have been through the rehabilitation process and only a handful have relapsed, into ordinary crime not terrorism. The risk of LTTE resurgence does not come from within Sri Lanka now. There is very little evidence coming out of the Northern and Eastern Provinces because of self-censorship by journalists and lack of access for human rights bodies and other non-governmental organisations. However, such evidence as there is shows that although the camps have closed, and infrastructure is being rebuilt, that infrastructure is controlled by the Sri Lankan military forces and many Tamils have been unable to return to their lands and businesses, either because they are now in military hands or because they are in HSZs, which are still out of bounds and being de-mined. There is a dearth of jobs for Tamils who were internally displaced and economic conditions are hard.
343. There have been a number of "white van" disappearances, in Colombo and the Northern Province: some individuals turned up in TTD hands, some were held for ransom, and many have not turned up at all. Year on year, the number of such disappearances is increasing during the peace, rather than decreasing. The size and budget of the Sri Lankan armed forces are also increasing year on year: there are now one soldier to every five civilians in the Northern Province, and the standing army of Sri Lanka is larger than that of the United Kingdom.
344. The only direct evidence of the opinion of Tamils in the Northern Province was that of Dr Smith: alone among the expert witnesses, he had spoken to individual Tamil farmers and small businessmen in the Vanni. He found them to express caution as to whether the end of the civil war was a false dawn of peace, but that what they really wanted was for everything to return to normal. The civil war has caused enormous loss of life and harm to the infrastructure and economic conditions in the Northern and Eastern Provinces and, after a quarter of a century of conflict, a return to peace is likely to be the principal desire of those living there.
345. Procedures at the airport are more benign than previously. There are two reasons, the first being that anyone who requires a TTD or an ETD must apply from the SLHC or Sri Lankan Consulate in the country of refuge; questions are asked to identify them and their families, and whether they had any past LTTE connections. In practice, all of those who lived in areas where the LTTE was the *de facto* government during certain periods of the civil war will have LTTE connections. The information is passed to Colombo, where a decision is made whether to issue a travel document.

There exists a Bilateral Readmission Agreement between the United Kingdom and Sri Lanka but we have not seen it. The respondent was not prepared to produce it and so we do not know on what terms a person whom the Sri Lankan authorities would otherwise be reluctant to accept back may nevertheless be granted travel documents.

346. The travel documents are not issued in London: they are emailed to the High Commission from Colombo and then a stamp and photograph are added here. Before anyone whose travel documents are out of date even begins to return, the authorities in Colombo have had the opportunity to establish whether they are of interest and know everything they need to know about that individual.
347. There was international criticism of delays at the airport. These are relatively brief now and there are no detention facilities at the airport. However, those who return are required to give an address (their home address as specified on their national identity card) and to return and reside there. Checks are made within a week by the Sri Lankan authorities at the stated address. If the authorities are interested in a person, they will be picked up at home not at the airport, unless they are on a "stop" list held at the airport. If on a "stop" list, they will be interviewed by the TID and that is likely to involve physical abuse engaging international protection.
348. Internal relocation, to Colombo or elsewhere, will not in most cases avail an appellant in whom there is adverse interest. He or she will be expected to reside at their identity card address. For those who come from Colombo, there are no fixed checkpoints and those checkpoints which exist are not computerised. Attempts to revive a fixed checkpoint at Wellawatte were successfully resisted by the local people and were withdrawn. Colombo is neither more nor less safe than any other part of the single-state Sri Lanka.
349. The rehabilitation process was applied to all identified LTTE cadres at the end of the civil war. That is not its purpose now: it is used where a person is considered to be involved in possible resurgence of the LTTE or contacting the active diaspora. Sri Lankan Tamils returning from the diaspora who did not undergo rehabilitation during 2009-11 are not for that reason at risk now, unless they can be shown to come within the risk factors presently identified.
350. The case of the Jaffna students arrested for lighting lamps on Maaveerar Naal in November 2011 is not the same as that of students, or Tamils generally, who attend public demonstrations in the diaspora. That particular incident reflected a recommendation in the LLRC report that Tamils within Sri Lanka be permitted to celebrate events such as Maaveerar Naal, Pongu Tamil and Mahaveera. The Jaffna students were arrested and sent to rehabilitation, in line with the GOSL's Sinhalisation policy in the Northern Province.
351. Our overall conclusion regarding diaspora activities is that the GOSL has sophisticated intelligence enabling it to distinguish those who are actively involved in seeking to revive and re-fund the separatist movement within the diaspora, with a view to destabilising the unitary Sri Lankan state. Attendance at one, or even several demonstrations in the diaspora is not of itself evidence that a person is a committed

Tamil activist seeking to promote Tamil separatism within Sri Lanka. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.

352. The evidence before us indicates that any Tamil who seeks a travel document from the SLHC in London or another diaspora hotspot will have a file created in Colombo and will be interviewed in London before a decision is made to issue a TTD. By the time the DIE in Colombo emails a TTD to London to be issued to such an individual, the Sri Lankan authorities will know all they need to know about what activities an individual has undertaken outside Sri Lanka and, in particular, whether the returnee poses a real risk to the unitary Sri Lankan state or the GOSL on return.

The LP/TK factors

353. The LP/TK factors now date back almost six years, and were formulated during the civil war. There have been real changes, both good and bad, in Sri Lanka since the end of the civil war.
354. The LTTE is a spent force within Sri Lanka and considered unlikely to rise again from within the unitary Sri Lanka, which is tightly controlled by the Sri Lankan security forces. The perceived risk against which the GOSL works now concerns the possibility of LTTE resurgence and efforts to restart the internal armed conflict, from outside Sri Lanka, led by diaspora activists. The GOSL no longer relies principally on checkpoints and searches; its approach is intelligence-led and it has sophisticated, extensive intelligence as to those who are seeking to destabilise the unitary state, within the diaspora and in Sri Lanka itself.

Country guidance

355. As already stated, while the December 2012 UNHCR guidance has assisted us in reaching the conclusions on country guidance which we now set out, we have not heard evidence on all of the categories identified in the guidance and we have heard evidence from a very wide range of experts with knowledge of conditions today in Sri Lanka. Professor Good and Dr Smith were both asked to comment on whether the LP/TK factors continued to be of relevance. Each of them said that they were, but offered a list of more current suggestions in addition.
356. Having considered and reviewed all the evidence, including the latest UNHCR guidance, we consider that the change in the GOSL's approach is so significant that it is preferable to reframe the risk analysis for the present political situation in Sri Lanka. We give the following country guidance:
- (1) This determination replaces all existing country guidance on Sri Lanka.
 - (2) The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.

- (3) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
- (4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.
- (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
- (6) There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
- (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
- (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.
 - (b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.
 - (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.
 - (d) A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

(8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.

(9) The authorities maintain a computerised intelligence-led "watch" list. A person whose name appears on a "watch" list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.

(10) Consideration must always be given to whether, in the light of an individual's activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the "Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", published by UNHCR on 21 December 2012.

Determination of the individual appeals

357. We turn, therefore, to consider the position of the individual appellants in the light of our guidance. In each case, we set out the agreed questions, the facts and any evidence received, submissions and conclusions.

The first appellant

358. The agreed issues in relation to the first appellant were whether he had been ill-treated in the past, and if so, by whom; and in the light of the answer to that question, whether there was any risk of persecution or serious harm if he were returned now.

Facts for the first appellant

359. The first appellant is a Sri Lankan national of Tamil ethnicity born in Kilinochchi in the area of Vanni in 1986. He has 2 elder sisters, one of whom joined the LTTE in 1998. She was a qualified LTTE doctor and joined Prabhakaran's personal medical team around May 2007. The first appellant agreed to join the LTTE in March 2007. He received 1 month's arms training and 15 days' financial training. He was thereafter based at Kilinochchi LTTE camp. He was later assigned to the LTTE's finance wing at the LTTE's headquarters in Kilinochchi. The first appellant was subsequently put in charge of a section that provided diesel and oil to the LTTE fighting units.

360. In July 2008, he was ordered to the frontline and given the responsibility of supervising the digging of bunkers on the "Second Line". On 14 November 2008, during a battle at the western side of Muhamalai, the first appellant, amongst others, was cut off from the LTTE areas by the Sri Lankan military. He followed the general public, who were moving into an army stronghold area. Over the three days following his arrival in the army area, the army split the arrivals into three groups, one group being those the army knew or suspected to be associated with the LTTE. The first appellant, along with 16 other bunker digging supervisors, was separated from the public and taken to Kodikamam Police Station. Whilst there, he admitted to the CID that he had been forcibly recruited into the LTTE. He was not physically assaulted whilst at the police station.
361. On 17 November 2008, the first appellant was transferred to a camp at Kopay, Jaffna. He was detained in this camp until the 28 October 2009. In February 2009 he was contacted by the Red Cross, who located his mother and one of sisters in Vavuniya camp. He was questioned 3 times by the CID whilst in the camp but was not physically ill treated whilst there.
362. Upon being released from Kopay camp, the first appellant signed a release letter, which was typed in English and interpreted into the Tamil language. This letter contained details of the dates on which the appellant was detained and released.
363. Between November 2009 and March 2010, the first appellant lived in Vavuniya with his mother, without any further difficulty. He returned to Kilinochchi, with permission, in April 2010 and was issued with an identity card in May 2010.
364. From 2010-2012, the first appellant was repeatedly questioned by the CID, whose questioning was focused on his previous role for the LTTE and that of his sister. Their suspicions were not allayed but rather increased over time:
- (i) In June 2010, he was ordered to attend the CID base in Akkerayankulam. He was questioned about the whereabouts of fuel canisters and similar items which the LTTE had allegedly buried in the area. He was not ill treated;
 - (ii) In October 2010, the first appellant was again ordered to the CID base, and questioned about his sister's whereabouts. It was also suggested on this occasion that he had been continuing to assist the LTTE by collecting funds. He was not physically ill treated but was threatened with being shot;
 - (iii) On 5 December 2010, 15 soldiers entered the first appellant's house and took his mobile phone;
 - (iv) In January 2011, soldiers came to his house and took his details;
 - (v) On 29 May 2012, the first appellant was arrested from his home and taken to the CID base at Akkerayankulam. This time, he was detained;

(vi) On 30 May 2012, the appellant was transferred to the army camp at Kilinochchi. He was detained for three days, during which time he was ill treated, questioned about his sister's LTTE involvement and accused of supporting the LTTE.

365. The first appellant was released on 1 June 2011 after payment of a substantial bribe. He left Sri Lanka via Colombo airport two days later, with the assistance of an agent, using a passport obtained for him by the agent before his arrest. He then travelled via Nairobi to the United Kingdom, arriving here on 27 June 2011 in possession of an Indian passport. He claimed asylum on arrival.

366. Since his arrival in the United Kingdom, the first appellant has taken part in protest marches against the GOSL organised by the Tamil Youth Organisation and the British Tamil Forum, both of which the Sri Lankan authorities regard as LTTE front organisations. He also demonstrated on Pall Mall during the Sri Lankan President's lunch with the Queen in 2012.

367. The first appellant has not lost contact with his family: he spoke to his mother after coming to the United Kingdom and she told him that since his departure the CID have visited the family house looking for him and his sister, that they threatened his mother and asked whether the first appellant was still working for the LTTE finance wing.

Respondent's decision

368. The Secretary of State refused the first appellant leave to enter by way of a decision dated the 30 October 2011. In the letter of refusal which accompanied that decision, she concluded that, save for the evidence given by the first appellant as to his name and nationality, he had fabricated his evidence. In particular she rejected as implausible the following parts of his account:

- That the LTTE, when recruiting the first appellant at his shop in 2007, did not also seek to recruit the fourteen other persons in the shop at the same time;
- That the appellant received only 1 month's training from the LTTE, which the respondent considered to be inconsistent with background evidence indicating that LTTE members at that time underwent a rigorous 4-month training regime;
- That the first appellant did not seek to flee from the LTTE in the 3-hour period between the time he was informed by the LTTE of their intention to recruit him, and the time he was taken by them;
- That the first appellant would have been supervising civilians digging bunkers whilst unarmed and not wearing an LTTE uniform;
- That the first appellant experienced no difficulties leaving Sri Lanka, which if true indicated that he was of no interest to the authorities at that time.

369. The respondent also considered that the first appellant had given inconsistent evidence as to the contents of the document which he asserted he had been required to sign upon his release from Kopay Army Camp in 2009.

First-tier Tribunal's decision

370. The first appellant appealed to the First-tier Tribunal. His appeal was heard by First-tier Tribunal Judge Stott, and dismissed on all grounds in a determination prepared on the 2 February 2012. The following paragraphs of Judge Stott's determination are of particular relevance:

"[17] I am prepared to accept that the appellant has been detained by the Sri Lankan authorities from November 2008 until October 2009 in the Kopay Camp in Jaffna. During that period I also accept that the Red Cross were contacted who located the appellant's mother and the younger of his two sisters. It is not suggested however that despite being held for almost twelve months that there was any ill treatment of the appellant. This would suggest that during that time he was not regarded as having been an active belligerent. It is also of note that he was given a release letter which from its terminology, described by the appellant during the course of his interview, simply detailed the dates when he was taken to the camp and his release. I do not accept that it contained further details regarding him having to remain within a particular locality as the appellant had the opportunity to give those details on interview (see questions 169 and 170) of the interview record.

[18] It is also apparent from the appellant's version that he initially lived with his relatives in Vavuniya before returning to his home area of Kilinochchi in April 2010. He experienced no difficulties although he was questioned by the police in June and October 2010. It is not suggested that the questioning was conducted with violence or torture. ...

[23] In relation to the appellant's witness I have great reservations regarding his credibility. As indicated there were conflicts in the evidence given about the fashion, the manner and timing of the contact between him and the appellant. It is also apparent that he has become friendly with an individual working for the instructing solicitors and has been informed of the appellant's background. Although he himself has sought asylum on the basis of his involvement with the LTTE his dubious credibility casts doubt upon his claims regarding his relationship with the appellant's sister and her position in the organisation.

[24] In view of my findings I do not believe that the appellant is at risk from the Sri Lankan authorities upon his return. I accept the conclusion of the medical report that the appellant has been tortured but in view of the appellant being able to leave the country using his won passport despite having been detained in 2008 and having effected his escape by bribery I do not believe that there remains a serious risk to him on return"

Error of Law

371. The first appellant was granted permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Chambers, in a decision dated 23 February 2012.

372. Permission to appeal was granted, *inter alia*, because First-tier Tribunal Judge Chambers considered it arguable that the reasoning in the First-tier Tribunal's determination was defective, since the judge had overlooked consideration of photographs of the appellant in LTTE uniform, including photographs of his sister with Prabhakaran's body. Judge Chambers considered also that the determination failed to take proper account of the existing country guidance.

373. The respondent in her rule 24 notice dated 20 March 2012 did not oppose the appeal and invited the Upper Tribunal to consider the matter afresh.

374. On 1 May 2012 Upper Tribunal Judge Hanson found that there was a material error of law in the determination and ordered that the decision be remade by the Upper Tribunal at a hearing. He directed that:

“... a. The parties shall prepare for the hearing on the basis that the findings of fact of the First-tier Tribunal at paragraphs 17, 18 and 23 (but not in relation to the alleged friendship between the witness and the member of the staff employed by the appellant’s solicitors) shall stand.”

The preserved findings

375. The findings of fact from the First-tier Tribunal which Judge Hanson ordered preserved were as follows:

“[17] I am prepared to accept that the appellant has been detained by the Sri Lankan authorities from November 2008 until October 2009 in the Kopay Camp in Jaffna. During that period I also accept that the Red Cross were contacted who located the appellant’s mother and the younger of his two sisters. It is not suggested however that despite being held for almost twelve months that there was any ill treatment of the appellant. This would suggest that during that time he was not regarded as having been an active belligerent. It is also of note that he was given a release letter which from its terminology, described by the appellant during the course of his interview, simply detailed the dates when he was taken to the camp and his release. I do not accept that it contained further details regarding him having to remain within a particular locality as the appellant had the opportunity to give those details on interview (see questions 169 and 170) of the interview record.

[18] It is also apparent from the appellant’s version that he initially lived with his relatives in Vavuniya before returning to his home area of Kilinochchi in April 2010. He experienced no difficulties although he was questioned by the police in June and October 2010. *It is not suggested that the questioning was conducted with violence or torture ...*

[23] In relation to the appellant’s witness I have great reservations regarding his credibility. As indicated there were conflicts in the evidence given about the fashion, the manner and timing of the contact between him and the appellant. It is also apparent that he has become friendly with an individual working for the instructing solicitors and has been informed of the appellant’s background. Although he himself has sought asylum on the basis of his involvement with the LTTE his dubious credibility casts doubt upon his claims regarding his relationship with the appellant’s sister and her position in the organisation.

[24] In view of my findings I do not believe that the appellant is at risk from the Sri Lankan authorities upon his return. *I accept the conclusion of the medical report that the appellant has been tortured* but in view of the appellant being able to leave the country using his own passport despite having been detained in 2008 and having effected his escape by bribery I do not believe that there remains a serious risk to him on return.”

[Emphasis added]

Evidence before Upper Tribunal

376. The first appellant gave additional evidence before the Upper Tribunal, on two occasions. On the first occasion, there were substantial difficulties in comprehension between the first appellant and the Tamil interpreter. It was agreed by the parties, and accepted by the tribunal, that the evidence given by the first appellant on this occasion should be disregarded. On the second occasion the first appellant gave evidence, there were no such difficulties. The following is a summary of the evidence we received in written form, and on the second occasion:

- (a) The first appellant adopted a lengthy witness statement drawn in his name and dated 11 February 2013, which stated, in summary, that; (i) he had not been abducted by the LTTE in March 2007 and his earlier statement to the contrary contains error in this regard, this being as the likely consequence of a mistranslation, (ii) only one of his sisters joined the LTTE, and the statement in the expert report authored by Dr Smith that both of his sisters had joined the LTTE was incorrect; (iii) the original documents, copies of which are provided between pages 79 to 96 of his bundle, are genuine; (iv) the original photograph of him in LTTE uniform was not before the Tribunal because he handed it to his previous solicitors who had not returned it; and that (v) the photograph was taken in Kilinochchi in 2007 after the funeral of an LTTE hero.
- (b) The first appellant also gave detailed evidence as to the contents of other photographs before the tribunal, identifying the LTTE personnel contained within the photographs, including his sister and Prabhakaran, the now deceased former leader of the LTTE. Further evidence was also given by the first appellant to the effect that; (i) he had voluntarily joined the LTTE, having been asked to do so; (ii) his training for the LTTE had lasted 1 ½ months, of which arms training constituted 1 month and training in LTTE financial affairs lasted 15 day. After training he was transferred to the finance division and then worked in the fuel distribution section.

377. Under cross-examination from Mr Hall, the first appellant confirmed that:

- (c) He had joined the LTTE in 2007 as a volunteer, after they came to his shop and asked him to do so. The LTTE had given him three hours to decide whether to join: whilst he would not have joined had he not been asked, the appellant was aware that had he not done so, his refusal would have been very embarrassing for his sister, because of her high profile in the LTTE. The first appellant repeated that his sister had been a doctor and a part of Prabhakaran's medical team.
- (d) The LTTE's fuel and diesel was obtained from foreign countries and the army-controlled areas. The distribution section was in Kilinochchi and that was where the appellant worked. He played no part in purchasing the fuel; his job was to see that it reached the various places where it was needed and that proper accounts were kept.
- (e) Of the seventeen persons working with him in the LTTE, he was aware of three who had been taken for questioning by the Sri Lankan authorities and who never returned.

- (f) The first appellant stated that he had not signed a confession whilst detained in Kopay camp.
- (g) As to his travel arrangements out of Sri Lanka, the first appellant had not asked questions. The agent had obtained a passport for him and had retained it. His uncle had arranged the agent: the first appellant had not asked his uncle how much he had paid the agent. His uncle owns a shop selling agricultural products, and has 2 adult children.
- (h) The appellant was asked for further detail of his relationship with the agent. His evidence was that his uncle had spoken to the agent after the first appellant's arrest. He stated that he communicated with the agent only through the uncle, but when it was put to him that this was not consistent with his earlier evidence, the first appellant asserted that his uncle had introduced him to the agent and that he had communicated with the agent principally through his uncle. He assumed that the agent knew a CID officer and that was how his release had been arranged.
- (i) When "released", the appellant had been taken, by a CID officer, to an area about 200 metres outside the Kilinochchi camp where he was held. His uncle and the agent were waiting for him in a car. He had left the camp "through a back door".
- (j) Whilst in detention he had been asked questions about the LTTE finance section, and persons who had contact with the section. He was tortured and asked questions in a dark room.
- (k) His fingerprints were not taken during the 2011 detention, but his photograph was taken. He was not provided with a release document on this occasion. He had not thought of asking the agent whether he would be recorded as an escapee. He had not asked the agent any questions.
- (l) He was now on a list of people to be killed.

Remaking the determination: the issues

378. There is a clear finding in the preserved paragraph 24 that the appellant was tortured. The First-tier Tribunal Judge expressly found that the torture had not occurred in the original detention or during the police questioning of the appellant in June and October 2010; he also disbelieved the account of a further three day detention between 29 May and 1 June 2011, during which the appellant said he had been tortured. It was unclear when the First-tier Tribunal Judge considered that the torture had occurred.

379. The appellant's account was that by June 2011, the authorities knew of his connection with his sister and that she was a senior member of the LTTE, whom they believed to be one of those seeking to resurrect the LTTE and restart the conflict; that they tortured him to find out where she was; and that he was released after three days since his family had discovered his whereabouts and paid a bribe. The appellant's account was that the agent who arranged his journey obtained an Indian passport bearing the

appellant's photograph, and he left the country two days later, flying from Colombo airport.

380. Those are the findings affected by the error of law and upon which the Upper Tribunal must make fresh findings now.

Submissions

381. For the respondent, Mr Hall accepted that this appellant had been a low level member of the LTTE, involved in the distribution of fuel.

382. He did not seek to go behind the preserved findings of the First-tier Tribunal that the appellant was detained in Kopay camp as claimed between November 2008 and October 2009 and that, after his release from this detention, he initially lived in Vavuniya with his mother and then returned to live in Kilinochchi in April 2010. He accepted that the appellant was questioned by the police on numerous occasions whilst living in Kilinochchi, but was not physically ill-treated during such questioning, although he was threatened with ill-treatment.

383. Dealing with the appellant's account of his release and escape from Sri Lanka, with the help of an agent paid for by his shopkeeper uncle, and his claim for the first time in evidence before us that he was on a "kill" list, Mr Hall asked the Upper Tribunal to find the final detention in 2011 to be an embellishment. The appellant's account of being arrested and tortured by the authorities after an uneventful series of visits by them should not be accepted as credible.

384. The appellant claimed to have travelled out of Sri Lanka in June 2011 on a passport which the agent had obtained for him in December 2010, months before his last claimed arrest. The appellant's oral evidence as to whether he had spoken to the agent prior to his detention in 2011 was inconsistent with his written account. In addition, the appellant's new evidence that he had been told he was on a list to be shot, should be dismissed as fabrication to bolster his claim. No such evidence had been given previously.

385. As to diaspora activities, even if the appellant had taken part in demonstrations in the United Kingdom, as claimed, there was nothing to suggest that the Sri Lankan authorities were aware of that and would associate him with the resurgence of the LTTE in the diaspora. He had no diaspora contacts when working for the LTTE, had done nothing after his release in 2009 to raise his profile in the eyes of the authorities, and his sister's record as one of Prabhakaran's doctors in the LTTE was not enough to put the appellant at risk now.

386. In submissions made on behalf of the first appellant, Mr Palmer argued that the Tribunal ought not to consider itself bound by the factual findings of Upper Tribunal Judge Hanson; the First-tier Tribunal determination at paragraph 18 was factually erroneous and was inadequately reasoned at paragraph 23. The error of law decision made no reference to the unchallenged finding in the First-tier Tribunal determination that this appellant had been tortured.

387. The Tribunal was invited to find the first appellant's account credible in its entirety: his account had remained highly consistent throughout, both internally and with the background evidence, in particular that relating to bribery as a means of facilitating release from detention, exit procedures at Colombo airport and the Sri Lankan authorities' monitoring by of family members.
388. The credibility points raised by Mr Hall were not critical to the appellant's account overall: the Tribunal should find that it was not credible that the agent would have disclosed any material facts to the appellant given the likelihood that the agent worked for a "very serious criminal organisation"; the appellant's very late disclosure that he was on a list of those to be shot, ought not to detract from his appellant's credibility, since it often happened in asylum appeals that parts of the account were disclosed late. Even if that part of the account were fabricated, the rest of the account should be treated as credible. Mr Hall had accepted that there was a real risk of torture in detention, which was fully supported in the country evidence.
389. The appellant relied on the reports from Professor Gunaratna, who was satisfied that the appellant was an LTTE cadre who worked in the Finance Wing as claimed. Professor Gunaratna had been responsible for debriefing LTTE members, and having designed and worked on the Sri Lankan government's rehabilitation programme, was able to provide a "very good indication of the perception of the SL authorities".

Conclusions on the first appellant's appeal

390. The challenges in the respondent's letter of refusal relate mainly, although not entirely, to elements of the account now either the subject of the preserved findings of the First-tier Tribunal or accepted by the respondent to be true. As detailed above, Mr Hall for the respondent accepted the appellant's account of his role in the LTTE finance section and fuel distribution, the Kopay camp detention in 2008-2009, his release to live with his mother, his return to Kilinochchi in April 2010 and his questioning while in Kilinochchi by the police (without ill-treatment) on numerous occasions. He accepted that during that questioning the appellant was threatened with ill treatment. He continued to dispute the 2011 detention, the torture which the appellant claimed to have suffered during that detention, and the circumstances of the appellant's exit from Sri Lanka.
391. We are satisfied to the lower standard that the 2011 events occurred as claimed. We have given weight to the evidence of Professor Gunaratna, although he was not tendered for cross examination. Professor Gunaratna's report largely goes to corroborate those parts of the appellant's evidence which have, in any event, now been accepted. His evidence also supports the appellant's account of his sister being a personal doctor to Prabhakaran, the late founder and leader of the LTTE.
392. We do not consider that the authorities' failure to arrest the appellant between 2010 and 2011 indicates that they did not arrest and detain him in May 2011. It is entirely possible that their information improved during that period to the extent that they became interested in him, alternatively, that some other matter of interest had arisen in which they considered he might have information.

393. The First-tier Tribunal Judge was satisfied that the appellant had been tortured, and although that finding is not one of those expressly preserved by Judge Hanson, after considering the medical report for ourselves, in the context of the evidence as a whole, we accept the account of torture. Dr Arnold's medico-legal report is prepared to the Istanbul Protocol standard and is strongly supportive of the appellant's account of torture during his last detention.
394. The principal challenge remaining is to the appellant's ability to travel through Colombo airport unhindered, if he were of interest to the Sri Lankan authorities as claimed. Given the substantial sum paid to the agent and the evidence before us on the pervasive bribery and corruption in Sri Lanka, applying the lower standard, we accept this element of the appellant's account. The appellant's uncle arranged the agent and paid for his services. The appellant was entitled simply to trust his uncle. We accept as credible that the agent obtained a passport in December 2010 which remained unused by the appellant in May 2011, on which he was able to leave Sri Lanka. We accept that the appellant asked no questions of the agent.
395. When looked at as a whole we find the respondent's challenges to the credibility of this appellant's evidence to be of little substance, save for the late disclosure that he had been informed that he was on a list to be shot. No satisfactory explanation has been provided by the appellant as to why he failed to mention that until he was cross examined before the Upper Tribunal. His evidence was consistent and generally credible. We accept all of the appellant's account as credible, save in respect of that late embellishment, which we do not accept.
396. Given the close connections the appellant's family had with Prabhakaran, and his irregular exit from Sri Lanka, we are satisfied that he is a person with what the UNHCR Guidelines describe as "more elaborate links with the LTTE" and that there remains a real risk that he would be of interest on return. In order to obtain a TTD he will be required to complete a form, provide full details of his previous addresses and family members in Sri Lanka, and attend an interview. When he arrives in Sri Lanka the authorities will know everything they need to know about him.
397. The authorities within Sri Lanka have knowledge of the appellant's previous role within the LTTE, and in particular his significant involvement in the LTTE's finance wing and its fuel supply. This, coupled with his sister's close connections to the former leader of the LTTE, his pro-Tamil separatism activities in the United Kingdom, and the nature of the enquiry made by the Sri Lankan authorities with the appellant's family since his departure from his homeland, leads us to conclude that it is reasonably likely that the Sri Lankan authorities perceive the appellant as having a significant role in relation to post-conflict Tamil separatism within the diaspora.
398. The first appellant's appeal is therefore allowed on asylum grounds and under Article 3 ECHR. No separate Article 8 ECHR argument was advanced. He is not entitled to the grant of humanitarian protection. No exclusion point has been taken by the respondent under Article 1F of the Refugee Convention or Article 12(2) of the Qualification Directive.

The second appellant

399. The agreed question to be answered in relation to the second appellant was whether he would face a real risk of persecution or serious harm in Sri Lanka, on the basis that his previous detention would become known to the authorities. The findings of fact in the First-tier Tribunal were that in May 2011 the appellant was a 24 year old Sri Lankan Tamil, originally from Jaffna. In 1996, he and his family had been forced to relocate to Puthukudyiruppu, where the LTTE allotted them some land and building materials for a house. He received some education and then went to work with his father, making wattle fences from coconut palm fronds. After two years, he was employed by the LTTE at the Pallai checkpoint. He was paid, and provided with meals and accommodation. His family remained in Puthukudyiruppu, and in 2002, after the ceasefire, the appellant went back to join them.
400. The ceasefire ended and the civil war broke out again in 2006. This time it was the appellant's brother who was recruited by the LTTE. He was never seen again and the family believed he had died in the fighting. In September 2008, the appellant was forcibly recruited by the LTTE, working on bunker digging and transporting the wounded. He continued with this work until the end of the civil war in May 2009 (the First-tier Tribunal Judge's determination refers erroneously to 2008).
401. The appellant surrendered to the army at Chettikulam, initially as a civilian but was rapidly identified as an LTTE cadre. The army passed the appellant to the CID. He was taken to another camp (Anuradhapura), where he was detained with sixteen others for over three months. He was not given enough to eat and made to kneel on the floor for hours at a time. He was mistreated, interrogated, beaten and tortured. He was burned with lighted cigarettes and beaten with metal rods. He was beaten with a rifle butt, resulting in a lump on the bone of his right shoulder. He signed a document in the Sinhala language, a language he is unable to read, and was unsure what it was. The appellant provided no medical evidence of any scarring.
402. The appellant's father managed to locate him on a list of IDPs. Once he had the name of the camp, a bribe was paid by his paternal uncle (who had a shoemaking business and was relatively wealthy) and the appellant was released on 30 August 2009. He was taken to Colombo, where he spent two weeks before leaving Sri Lanka, via Dubai, Turkey, and Portugal, arriving in the United Kingdom over a year later. An agent dealt with the journey and organised the timing. Thirteen months were spent in Portugal, waiting for the right moment to travel on to the United Kingdom. His uncle was still paying the agent. The appellant was told to wait to make his claim until he got to the United Kingdom.
403. The appellant kept in contact with his family once he reached the United Kingdom. They were back in Jaffna, but under suspicion. A cousin of his father's was still in detention in a prison for high-risk LTTE personnel. The authorities had visited the family home in September 2010, according to the appellant's mother; they asked to see the family's ration cards. The appellant's name was crossed out: they wanted to know where he was but she stated that he was still in the camps. They knew he was not and said that his mother "had better find [the appellant]". The authorities were

therefore aware that the appellant was missing and he would be at risk if returned to Sri Lanka.

404. When setting aside the First-tier Tribunal determination, the Upper Tribunal (Upper Tribunal Judges McGeachy and King) expressly preserved the findings of the First-tier Tribunal Judge with regard to the credibility of the appellant's claim. They considered it appropriate that the appeal proceed to a further hearing to consider evidence on whether or not the appellant would face detention or ill-treatment on return on the basis that his detention would become known to the authorities.
405. The error of law identified was that the First-tier Tribunal Judge had erred in his approach to whether the appellant's detention would bring him to adverse attention on return and if so, whether that would create a real risk of persecution or serious harm to him now.

Second appellant's evidence at the hearing

406. The appellant produced a second witness statement dated 7 December 2011 which appears to have been prepared in anticipation of the error of law hearing. In this he states:
- (i) His family has moved to a different address because intelligence people kept looking for him.
 - (ii) His mother informed him they have come looking for him three times since the hearing in May 2011. She went to the Grama Sevaka about this and she has sworn an affidavit before a local Justice of the Peace.
 - (iii) The Grama Sevaka and lawyer both told his mother that the appellant should not return to Sri Lanka as the authorities are still looking for him and it is not safe there. They also advised his mother that the family should move away from the area and so they have done so to a place about five to six kilometres away from their previous address. They do not have the resources to move far away. So long as the authorities do not know that they are there it is safe for them. His parents are particularly worried about his sisters and younger brother.
407. The second appellant produced a sworn affidavit dated 30 November 2011 from his mother, which restates the facts asserted by the appellant, and provides the following additional information:
- (i) She has three daughters and three sons.
 - (ii) Her husband's brother secured the release of the second appellant on 30 August 2009 after paying "a huge bribe" to some "high officials".
 - (iii) Her other son was forcibly recruited into the LTTE in January 2008 and has been missing since the end of the civil war in May 2009.
 - (iv) The Sri Lankan state security and paramilitary personnel have come to her home on three occasions in search of the second appellant since 3 July 2011. They told the appellant's mother that he was accused of being an LTTE member, that he had escaped from detention and is wanted for further

questioning. The state security officials who came to search for him on 3 July 2011 were very abusive; they harassed and threatened her. Two were in camouflage dress and the others were in plainclothes. A few of them were armed and had walkie-talkies.

(v) On 27 July 2011, eight men came in search of the appellant, three in army fatigues and the others in civilian clothes. Again, a few of them were armed and had walkie-talkies. They were more abusive and very rude. They took a few photos from her photograph album, including one of the second appellant, and required her to report to the neighbouring army camp on 30 July 2011.

(vii) The second appellant's mother reported as required. After a long wait, three officers in "partial" military uniform came. One spoke to her in fluent Tamil, accusing the second appellant of being a hardcore LTTE member and jail breaker. They questioned her about his whereabouts and were very rude and threatening.

(viii) Thereafter the second appellant's mother again consulted the Grama Sevaka and instructed a lawyer, Mr Sherosan Kumar.

408. Mr Sherosan Kumar (LLB) provided a "To whom it may concern" letter dated 5 December 2011, confirming that the second appellant's mother had contacted him at the end of July 2011 for legal advice. The letterhead is of an address in Colombo. His letter continued:

"...Having made few enquiries into the reasons behind Sri Lankan authorities' interest in [the second appellant] can confirm that [he] was detained by the state security forces from May to August 2009 or was involved with the LTTE. His mother claims that her son was tortured and was forced to sign a Sinhalese document which would eventually be fabricated as a self-confession. However, [the second appellant was released] after having paid a hefty bribe to some senior government officials. I further understand that the Sri Lankan security forces are highly interested in him for further questioning and have gone twice in July this year to his parents' house ... in search of him ... I believe that since [he] was not released officially the authorities could have listed him as an escapee from their custody and might have alerted the ports of entry exit."

409. Mr Kumar then states that he is in active practice as an attorney at law in the Supreme Court of Sri Lanka. He had represented several Tamil youths arrested on suspicion of involvement with the LTTE. He observed that authorities normally obtain confession from the detainees by way of torture which the state authorities rely on when bringing actions in the courts.

410. The second appellant gave oral evidence. He adopted his two witness statements and was tendered for cross-examination by Mr Hall. He stated that at the army camp, neither his fingerprints nor his photograph had been taken. He had signed something in the Sinhala language but he did not know what it was. He had been issued with an identity card, which had been checked, to ensure he was Sri Lankan. It was taken from him at the camp and he did not receive it back. He was in Chettikulam when his identity was checked and when he signed the Sinhala language paper. He went to Anuradhapura from there.

411. It was in Anuradhapura camp that he was ill-treated. He had been transferred to Anuradhapura after only two days in Chettikulam. He was not questioned in Chettikulam; detainees were sorted there into two groups, LTTE members and non-members. The appellant denied that he was an LTTE member, but he was transferred to Anuradhapura anyway. There, he was asked the same question, and was tortured. He believed that his ill-treatment in Anuradhapura, where he was tortured, was because he had been arrested during the final conflict of the civil war. He was brought in with LTTE members and separated from the others. He admitted in Anuradhapura that he was an LTTE member and then they started to ill-treat him. He had to admit it, because it was true, and because of the serious beatings. The appellant had given his fingerprints and confession in Chettikulam and he believed that there would be a record of his assisted 'escape'. There was a Terrorist Act in Sri Lanka; even after release, LTTE members could not move freely there.
412. The appellant's parents were not transferred to Anuradhapura but were detained in Chettikulam and released after about a month. During their detention in Chettikulam, posters were displayed with the names of those who had been transferred to Anuradhapura. That had enabled his father to find out where the appellant was detained; his father asked his paternal uncle to help organise the appellant's release, through PLOTE. The uncle paid an enormous bribe to CID officers, about 3.5 lakh rupees, to achieve his release.
413. The appellant asserted that the evidence in his mother's letter was the truth. He had spoken to his mother since coming to the United Kingdom, but her knowledge of how he had left Sri Lanka came from his uncle; the appellant had not told her about it. He had told her about being ill-treated and the other matters. He had told her about the circumstances of his release. The appellant could not explain why all the supporting documents he produced referred to his having signed a document in Anuradhapura camp, which was no longer his own evidence. He had left Sri Lanka on a passport provided by the agent.
414. In re-examination, Ms Anzani clarified the following points: the appellant had signed two documents in the Sinhala language, the first on the second day at Chettikulam. He stated that the paper was blank; he had signed it although they had not ill-treated him there. The second document was signed when he was released from Chettikulam and was similar to the previous one. He confirmed that it was his evidence that he had not signed any document at Anuradhapura. The account he gave now was the truth.

Submissions

415. Mr Hall's argument in the context of the Secretary of State's general submissions on the circumstances for returnees to Sri Lanka is that the key question is not whether the second appellant's previous detention would become known to the authorities but whether he would be perceived as connected to or potentially connected to the re-emergence of the LTTE.
416. The evidence was that the second appellant was a low-level LTTE cadre: there was every reason to believe that the Sri Lankan authorities would consider that any risk

the second appellant presented (which is doubtful) could be contained by means of monitoring and perhaps rehabilitation.

417. Submissions made on behalf of the second appellant make these key points:

- (a) Given the general positive credibility finding made by the First-tier Tribunal judge and in the absence of any adverse findings to the contrary the following should be deemed to be accepted:
 - (i) the second appellant was released following payment of a bribe by his paternal uncle; and
 - (ii) he left Sri Lanka clandestinely travelling to the United Kingdom via Dubai, Turkey and Portugal with the aid of an agent.
- (b) As to the nature of the document signed, that was not a matter of which the present Tribunal was seised. The credibility of the appellant's account had been accepted, including that he had signed an unknown document written in the Sinhala language. Any inconsistency in his evidence as to which was the camp where he signed it was unsurprising: inconsistencies of this kind in asylum appeals are not unusual, the Tribunal should have regard to the notorious unreliability of memory over time, and the context within the events were said to have occurred.
- (c) Alternatively, even if there were no purported confession on the second appellant's record, he remained at risk on return. Even if after his release he was not recorded as having absconded, a record would have been made of his known connections to the LTTE, his period of detention at Anuradhapura detention camp and his failure to complete the rehabilitation process.
- (d) Before returning to Sri Lanka, the appellant would require a travel document and would have to complete an application at the SLHC in London, since he had never possessed a passport. He would be interviewed there and also on return by DIE, SIS and CID. It would be extraordinary if he were not asked about his reasons for leaving Sri Lanka and his past history.
- (e) The appellant continued to contend that the adduced documents corroborated his mother's account of further visits and were not fabricated, as Mr Hall contended, to complete gaps in his earlier account.

418. As an LTTE cadre who had not completed his rehabilitation, the appellant risked being perceived as linked to the LTTE resurgence, because of his known former LTTE links; that risk was enhanced by his having spent time in the United Kingdom; the on-going interest in him after his arrival in the United Kingdom; his irregular release from detention; his illegal departure from Sri Lanka; his likely return on a TTD, rather than a national ID card or passport; and his missing brother's involvement in the LTTE.

Conclusions on the second appellant's appeal

419. Our starting point is the findings by the First-tier Tribunal that have been preserved. The second appellant was found to be credible as to those aspects of his account that the judge accepted. We remind ourselves that further time has passed since the events in question. The appellant's oral account before us contained a number of discrepancies with the account he gave, and which was found credible, in the First-tier Tribunal. In particular, he gave a discrepant account of where he had signed the Sinhala document (now said to be two documents). His account of his admission that he was an LTTE member is also confused as to whether he admitted it before or after the beatings in Anuradhapura. The additional evidence he provided was all supportive of his earlier account that he was tortured into signing a confession in Anuradhapura, which is not now his account.
420. If we had been hearing this appeal for the first time, we might have taken a different view from that taken by the First-tier Tribunal as to overall credibility, but we bear in mind that these events occurred some time ago now and that the positive credibility findings, and the findings of fact in the First-tier Tribunal were expressly preserved. We have, therefore, focused on the evidence and submissions concerning the issue identified, that is, whether his previous detention would cause adverse interest in him if he were returned today.
421. The following are the points relevant to that assessment:
- (i) This appellant was rounded up with others including his parents and taken to Chettikulam camp, where he was rapidly identified as an LTTE cadre and moved to Anuradhapura Camp, where conditions were worse. His parents were not moved and were released quickly. That account is entirely consistent with events after the civil war ended in May 2009;
 - (ii) The second appellant was not ill-treated whilst at Chettikulam camp; if it was there that he signed the Sinhalese document or documents, we consider that indicates that it (or they) was probably a benign document (perhaps a release or transfer to Anuradhapura camp), not a confession;
 - (iii) The appellant's evidence that he signed such a document both on his arrival and after his release indicates to us that it is reasonably likely that this was a form of record keeping of his entry into and exit from the camp;
 - (iv) The second appellant did not sign any confession or adverse document in Anuradhapura detention camp; and
 - (v) He was released informally after payment of a huge bribe to the CID at Anuradhapura and left Sri Lanka on a passport to which he was not entitled.
422. We next consider the evidence relating to the alleged enquiries made about the second appellant's whereabouts, and if credible, what triggered those enquiries. The undated letter from Mr Varatharsan, the Grama Sevaka, refers to the second appellant being listed as an escapee and wanted for further questioning. We do not consider that we can place much weight on that letter, given that the underlying account is not that upon which the appellant now relies. The same applies to the appellant's mother's account of the visits of the security forces and their assertion that the appellant is an escapee and a 'hardcore LTTE member': the authorities did not put him into the rehabilitation programme in 2009 and given the amount of

intelligence they received at the end of the civil war, they would be well aware of the type of activities in which he engaged (bunker digging and transporting the wounded).

423. The 5 December 2011 letter from Mr Kumar refers to his having made 'few enquiries' but not from whom: save where its contents are corroborated by other evidence (in relation to the second appellant's detention between May - August 2009 and his LTTE involvement), they merely reflect what his mother told the author. In particular, no source is given for Mr Kumar's understanding that the Sri Lankan security forces are now 'highly interested' in the second appellant. His evidence as to the appellant's release is that the authorities may have listed him as an escapee because he was not released officially, but that is supposition rather than evidence.
424. It appears from the evidence that the second appellant was not of sufficient concern in 2009 to be one of the 11,000 active LTTE cadres who were considered to require re-education through the "rehabilitation" programme before being reintroduced into Sri Lankan civil society. However, it has been found as a fact that he was questioned and ill-treated in Anuradhapura camp. He was released on payment of a bribe, which accords with the expert evidence before us indicating that bribery and corruption are endemic in Sri Lanka.
425. We accept that there is likely to be a record of the second appellant's presence in Chettikulam and Anuradhapura camps but the letter from his Grama Sevaka does not indicate that there is a Court order or arrest warrant which would result in his appearing on a computerised "stop" list at the airport and being re-detained there. We consider that the Grama Sevaka would be aware of such documents.
426. We have considered what interest the authorities might have in this appellant today. It is not suggested that the second appellant is among those in the London diaspora who are actively seeking to destabilise the single Sri Lankan state. The appellant was not a fighter: his activities for the LTTE did not include weapon training; he was a bunker digger and transporter of the wounded. One of the second appellant's brothers is among those who disappeared in the closing days of the civil war and is presumed dead.
427. We bear in mind that the second appellant, having tried to pose as a civilian, was quickly identified in 2009 as having LTTE connections, suffered significant ill-treatment in Anuradhapura Camp over a period of 3 months and 10 days at the end of the civil war, and was released informally. His paternal cousin, who was in the LTTE, is still in detention four years after the civil war. The appellant has spent time in London, which is a diaspora hotspot. The First-tier Tribunal judge accepted that a group of officers carrying walkie-talkies, some in uniform, visited the family home in Jaffna in September 2010, asked to see the family ration card, and asked where he was. When his mother said he was still in the camps, they told her that there was no one of that name in the camps and 'his mother had better find him'. The judge concluded that the authorities did not know he was missing or had been informally released from detention when they visited his home, and there appear to have been

no further consequences for the family, although the judge also notes the appellant's account that the family were under suspicion.

428. We have had regard to paragraph 339K of the Rules:

"339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."

The effect of that provision is that where the circumstances are the same, then past persecution or serious harm is to be regarded as predictive of future persecution or serious harm, absent a change of circumstances.

429. We have set out our reasons for considering that the GOSL's approach has modified since the appellant's last detention. The burden is upon the appellant to satisfy us, to the lower standard of a real risk, or a reasonable degree of likelihood, that if returned he would be at risk of persecution or serious harm from the Sri Lankan authorities. The process of obtaining a TTD will mean that the authorities learn all they need to know about his background before issuing a travel document.

430. Given the sophisticated intelligence available to the Sri Lankan authorities, within and without Sri Lanka, we consider that they will know what separatist activities he undertook in Sri Lanka and what his activities have been in the United Kingdom. We must ask ourselves, therefore, whether having regard to his known low-level activities during the conflict (bunker digging and transporting the wounded), there is a real risk that the second appellant will be perceived to be a diaspora activist with a significant role in diaspora activities designed to destabilise the unitary Sri Lankan state and revive the internal armed conflict.

431. The appellant's evidence is that the authorities do know that he is not in his home area and no longer in any camp: his mother's evidence regarding the visit made to her home, when her family documents were checked, if credible, indicate that they are concerned about his present whereabouts. It is possible that his name may appear on a "watch" list on the airport computers. That would not stop him passing through the airport but it means that he will be monitored by the security services in his home area once he returns there. However, that level of monitoring does not of itself engage international protection.

432. We approach his appeal on the basis that when the second appellant returns to Sri Lanka, the Sri Lankan authorities will know (a) that he was in a detention camp and was released informally (b) that he has a relative who is still in prison, four years after the civil war; but that (c) that since the end of the civil war and his detention in Anuradhapura camp, the second appellant has not taken any part, still less a significant part, in Tamil separatist activity in the United Kingdom.

433. We do not consider, on the facts we have found, that the second appellant has established that there is a real risk, or that it is reasonably likely, that the Sri Lankan

authorities would now regard him as a threat to the integrity of Sri Lanka as a single state. We do not consider that he would be perceived as having a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.

434. Accordingly, the second appellant's asylum appeal is dismissed. He is not entitled to humanitarian protection and his removal will not lead to a breach of Article 3 ECHR. No separate Article 8 claim was advanced.

The third appellant

435. The agreed questions to be answered in relation to the third appellant were:

- (i) Based on the factual findings preserved by the Court of Appeal, would the third appellant face persecution and/or serious harm on return to Sri Lanka?
- (ii) On *Devaseelan* principles, what impact do the findings in the third appellant's brother's appeal have on the credibility of the third appellant's account of interest in him and members of his family since he left Sri Lanka?
- (iii) What additional findings of fact in relation to events since the appellant left Sri Lanka should be made, and what effect do such findings have on risk on return for the third appellant?

Facts

436. The third appellant did not give evidence in these proceedings. The facts are those in Immigration Judge Walker's January 2010 determination which the Court of Appeal¹⁹ ordered to be preserved:

- (a) The appellant was involved with the LTTE from 1995-1997. He was given three months' military training then joined its medical unit. He was injured in a shell explosion in 1997 as a result of which he has numerous shrapnel wounds on his lower limbs, mostly on the left side.
- (b) The appellant was detained and tortured between November 2001 and March 2002, and signed a confession before his release.
- (c) The appellant has two sets of scars on his body, one group caused by being burned with hot cigarette butts and hot iron rods, and the second group caused by numerous shrapnel wounds from a shell explosion.
- (d) The appellant was released from detention after the February 2002 ceasefire. The appellant then lived and worked for the Land Survey

¹⁹ *MP (Sri Lanka) v Secretary of State for the Home Department* [2011] EWCA Civ 362. Lloyd LJ at paragraph 45:

"The appeal should proceed in the Upper Tribunal on the basis that certain of the findings of fact made by Immigration Judge Walker in the course of his paragraph 32 should stand. These are those recorded in sub-paragraphs (2) to (6), in the first three sentences of sub-paragraph (7), in sub-paragraphs (8) to (10), in sub-paragraph (11) except for the last two sentences, in sub-paragraph (12), in sub-paragraph (13) apart from the first two sentences, and in sub-paragraphs (14) and (15)."

Company in Colombo for three years. He did not come to the adverse attention of the authorities during the period March 2002-January 2005.

- (e) Contrary to his assertion, his Sri Lankan identity card had not been taken from him when he was detained. It was in his possession on 2 January 2003, when he applied for, and was issued, a Sri Lankan passport. He made the application openly and without difficulty.
- (f) The appellant came to the United Kingdom on a student visa, travelling in January 2005, and seeking further leave to remain in September 2008. He was not a good student; his attendance was low and the September 2008 renewal application failed. His attitude towards his studies was 'cavalier'. He told the Immigration Judge in January 2010 that he had not been studying at all since November 2008.
- (g) The appellant stated that he had travelled to India in 2008 to marry his Sri Lankan wife. This was inconsistent with his account that she did not know that he was wanted by the Sri Lankan authorities. His claim that on return from India, his wife had been arrested, detained, and had not been heard from since was untrue and an embellishment.
- (h) The appellant's claim that his mother had reported to him numerous visits from the CID asking about him was also fabricated and untrue. The Sri Lankan authorities' records would show that he had left Sri Lanka legally on his own passport, which he had applied for openly and received without difficulty. The authorities had no need to ask his mother where he was.
- (i) The appellant's claim that his brother was in the LTTE was a fabrication. The appellant himself was not being sought in January 2010: the authorities had no interest in him. His wife had not been arrested and the authorities had not been visiting his home looking for him.
- (j) The third appellant had taken a casual approach to his claimed studies in the United Kingdom; his attendance and success in those studies were both very low.
- (k) There was no allegation of diaspora activities in support of LTTE resurgence since the appellant came to the United Kingdom.

Third appellant's brother's determination

437. First-tier Tribunal Judge Lester allowed the asylum appeal of the third appellant's brother in February 2011. The appellant gave evidence in his brother's appeal, and both brothers were treated as credible witnesses in her determination. The judge did not set out in full the findings preserved by the Court of Appeal in respect of the third appellant. It is not clear from her determination whether she directed herself to discount the credibility of those parts of his account which the Court of Appeal found to be fabricated and/or embellished.

438. On the basis that the appellant and his brother were witnesses of truth, the judge found the following facts in the brother's appeal:
1. The appellant, his brother in the United Kingdom and another brother all received basic LTTE training and were associated with the LTTE until the ceasefire.
 2. The appellant's brother had been detained and tortured in 2008. He had cigarette burn scars on his body, as well as scars from being beaten by a long instrument. He had attempted suicide and the risk of recurrence was high.
 3. The third appellant's wife had been detained by the authorities after her return from the 2008 wedding and had to relocate for safety to live with her parents.
439. We must consider what additional findings of fact are required in the light of the brother's determination, applying *Devaseelan [2002] UKIAT 000702**; what weight we should place on findings in the brother's appeal; and whether the findings in the brother's appeal require a revision of the credibility findings in relation to the third appellant's account of post-departure adverse interest in his whereabouts and activities.
440. The first point in relation to the brother's appeal is that, on the face of the determination, the First-tier Tribunal judge dealing with that appeal evaluated the third appellant's credibility based solely on the evidence he gave at his brother's hearing; her reasoning on the third appellant's credibility is not in accordance with *Devaseelan* principles, since the first judge's reasoning in the third appellant's own appeal should always be the starting point. We note however that she concluded that the third appellant's brother had made a suicide attempt and that all three of the brothers (including the missing brother) were associated with the LTTE before the end of the civil war.

Medical evidence

441. A medico legal report from Dr Wilhelm Skogstad MRCPsych, a Consultant Psychiatrist at the Cassel Hospital in Richmond, and a trained psychoanalyst, sets out his history and training and also that he has provided over 60 psychiatric assessments and expert witness reports over the last 10 years. He has in the past attended court as an expert witness, though he did not do so on this occasion. After seeing the appellant for three hours in April 2012 and being given access to all of his medical records in the United Kingdom, Dr Skogstad concluded in his report that the appellant had severe post-traumatic stress disorder (ICD 10 1991, F43) and severe depression without psychotic symptoms (ICD 10 1991, F33.2), all typical of a history of severe trauma.
442. The third appellant has injuries on his body which Dr Andres Izquierdo-Martin's medico-legal report described in Istanbul Protocol terms as 'highly consistent' with his account of being beaten with different blunt instruments, burned with cigarettes and an iron bar, his head submerged in water, his hand cut with a knife, and a bag

with petrol fumes put over his head. He has scarring on his chest and upper and lower limbs.

443. In relation to suicide risk, at paragraph 4.6.4 under the heading of Mental State Examination, Dr Skogstad said this:

“4.6.4 His mood was severely depressed throughout the examination, with a deep sense of hopelessness. His range of affect was severely reduced, so that there was little indication of any other feelings during the examination. When plagued by intrusive memories [of the traumas and torture in Sri Lanka] he became at times very distressed. He showed a high degree of suicidality, with suicidal thoughts, suicidal impulses, apparently a clear suicidal plan and a serious determination to kill himself in case he was forced to go back to Sri Lanka.

4.6.5 He has a severely disturbed sleep pattern, with reduced sleep, difficulties falling asleep, disrupted sleep and early awakening. He frequently has nightmares, which have a very concrete quality and whose content is related to torture and the threat of being killed. He sometimes appears to scream in his sleep or even get up and walk around while still asleep.”

444. At paragraph 5.2, Dr Skogstad dealt with the impact of the threat of return to Sri Lanka. His opinion was that, independent of any actual risk, the appellant was clearly convinced that if returned to Sri Lanka he would again be arrested, detained and tortured. He continued:

“5.2.1 ...I am therefore of the firm opinion that in [the case of deportation] his already severe mental state would deteriorate further and his already significant suicide risk would become extremely high. It is highly likely that he would do everything to prevent being deported by taking his own life. ...

5.2.3 ...While there is still some small hope of being able to remain in this country, however, his suicide risk is likely to be contained. This would change dramatically if removal became a definite threat and reality. In this case his suicide risk would rise sharply. While his suicide risk is therefore not solely dependent on the question of removal, the degree of the risk is. ...

5.2.5 Should it turn out to be possible to prevent [the appellant] from committing suicide and a deportation could be carried out successfully, the removal to Sri Lanka would in my opinion cause severe mental suffering to him. ...even if there were adequate mental health services in Sri Lanka, his suspicion of the professionals in his own country would be too great to trust them sufficiently to accept any treatment or support. It would therefore also be impossible in my view for him to seek out treatment by himself in Sri Lanka.”

445. In Dr Skogstad’s opinion, the third appellant was not coping in the United Kingdom. He was in need of a carer and better psychiatric support; his condition was likely to improve only when his immigration status was settled, if that occurred. Dr Skogstad considered that the third appellant was not an untruthful witness and had made no attempt to mislead him; however he had serious doubts about the appellant’s ability to give reliable evidence due to his comprehension and responses being hampered by intrusive memories and flashbacks. Dr Skogstad did not consider him fit to testify.

446. A supplementary report dated 8 January 2013 maintained the findings as to suicide risk, truthfulness, fitness to give evidence, past history, and diagnosis. A more intensive treatment plan had been put in place but, as predicted, given the continuing uncertainty, treatment has had very little effect on his mental health. The third appellant did not give oral evidence at the hearing before us.

Conclusions on the third appellant's appeal

447. The third appellant is a person with an LTTE history and with what the UNHCR Guidelines refer to as "more elaborate links" to the LTTE (if the account about his missing brother is accepted). He has another brother who is a successful asylum seeker on LTTE and suicidality grounds. He bears both combat and torture marks on his body, but he was released in 2002 and seems to have been of no further interest to the authorities in Sri Lanka thereafter.

448. Since arriving in the United Kingdom, this appellant has taken no part, still less a significant role, in United Kingdom diaspora activities: he is not reasonably likely to be perceived as a person seeking to destabilise the single Sri Lankan state or revive the internal armed conflict. We remind ourselves that the GOSL has sophisticated sources of intelligence and would be aware of this lack of involvement, certainly by the time a travel document is issued. There is no real risk that this appellant falls within the new country guidance set out in this determination. His asylum, Article 3 ECHR and humanitarian protection claims therefore fail.

449. We must, however, consider the appellant's mental health problems under the ECHR. He bears on his body the scars of significant ill-treatment in Sri Lanka: he has severe post-traumatic stress disorder and severe depression, both of which Dr Skogstad considered to be typical of trauma victims. His mental health is fragile and he is considered a suicide risk even in the United Kingdom; although he is being treated, the treatment is having relatively little effect.

450. We reminded ourselves of the six elements of the test set out in *J v SSHD* [2005] EWCA Civ 629, which may be summarised thus:

- (1) The ill-treatment relied upon must attain a minimum level of severity such that it is "an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment": see *Ullah* paragraphs [38-39];
- (2) The appellant must show a causal link between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Examination of the article 3 issue "must focus on the foreseeable consequences of the removal of the applicant to Sri Lanka...";
- (3) In the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental.
- (4) An article 3 claim can in principle succeed in a suicide case;
- (5) Where the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is not objectively well-founded, that will tend

to weigh against there being a real risk that the removal will be in breach of article 3;

(6) The decision maker must have regard to whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights.

451. To those principles, we must also add the observation of Lord Justice Sedley in *Y (Sri Lanka) v SSHD* [2009] EWCA Civ 362, at paragraph [16], that

"...what may nevertheless be of equal importance is whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return".

452. We note that the appellant has a genuine fear of return and has difficulty in trusting or interacting with official figures, even in the United Kingdom. He has suicidal ideation and firm plans to commit suicide rather than return, even though there have as yet been no executed suicide attempts. One of his brothers is here as a refugee and has made executed suicide attempts. Another brother is stated to have disappeared in Sri Lanka.

453. Although the appeal fails under the Refugee Convention and Qualification Directive, we must consider whether the suicide risk which this appellant presents is such as to engage Article 3 ECHR. Applying the *J* and *Y* principles, and reminding ourselves of the gravity of the appellant's past experience of ill-treatment and his current grave mental health problems, with severe forms of both post-traumatic stress disorder and depression, we have considered whether returning the appellant to Sri Lanka will breach the United Kingdom's international obligations under Article 3.

454. The evidence is that there are only 25 working psychiatrists in the whole of Sri Lanka. Although there are some mental health facilities in Sri Lanka, at paragraph 4 of the April 2012 UKBA Operational Guidance Note on Sri Lanka, it records an observation by Basic Needs that "money that is spent on mental health only really goes to the large mental health institutions in capital cities, which are inaccessible and do not provide appropriate care for mentally ill people"²⁰.

455. In the UKBA Country of Origin Report issued in March 2012, at paragraph 23.28-23.29, the following information is recorded from a BHC letter written on 31 January 2012:

" 23.28 The BHC letter of 31 January 2012 observed that: "There are no psychologists working within the public sector although there are [sic] 1 teaching at the University of Colombo. There are no numbers available for psychologists working within the private sector. There are currently 55 psychiatrists attached to the Ministry of Health and working across the country."

Post Traumatic Stress Disorder (PTSD)

23.29 The BHC letter of 31 January 2012⁴⁶⁸ observed that:

²⁰ http://www.basicneeds.org/sri_lanka/srilanka.asp

“Post Traumatic Stress Disorder (PTSD) was first recognised in Sri Lanka in patients affected by the 2004 tsunami. Many of the psychiatrists and support staff in Sri Lanka have received training in Australia and the UK for the treatment of the disorder. A Consultant Psychiatrist from NIMH said that many patients often sought ayurvedic or traditional treatment for the illness long before approaching public hospitals, adding that this often resulted in patients then suffering from psychosis.””

456. We note that the third appellant is considered by his experienced Consultant Psychiatrist to have clear plans to commit suicide if returned and that he is mentally very ill, too ill to give reliable evidence. We approach assessment of his circumstances on the basis that it would be possible for the respondent to return the third appellant to Sri Lanka without his coming to harm, but once there, he would be in the hands of the Sri Lankan mental health services. The resources in Sri Lanka are sparse and are limited to the cities. In the light of the respondent’s own evidence that in her OGN that there are facilities only in the cities and that they “do not provide appropriate care for mentally ill people” and of the severity of this appellant’s mental illness, we are not satisfied on the particular facts of this appeal, that returning him to Sri Lanka today complies with the United Kingdom’s international obligations under Article 3 ECHR.

457. The third appellant’s appeal is therefore dismissed on asylum and humanitarian protection grounds but allowed under Article 3 ECHR. We do not need to go on to consider Article 8 ECHR. The respondent is directed to grant appropriate leave to the appellant.

DECISIONS AND DIRECTION

In each case, the making of the previous decisions involved an error on a point of law and the previous decisions are set aside, as set out above. Our decisions on the individual appeals are as follows:

- (1) The appeal of the first appellant is allowed on asylum and Article 3 ECHR grounds. It is dismissed on humanitarian protection grounds. No separate Article 8 claim was advanced. The respondent is directed to grant appropriate leave to the first appellant.
- (2) The appeal of the second appellant is dismissed on asylum, humanitarian protection, and human rights grounds. No separate Article 8 claim was advanced.
- (3) The appeal of the third appellant is dismissed on asylum and humanitarian protection grounds but allowed under Article 3 ECHR. The respondent is directed to grant appropriate leave to the third appellant.

Date: 17 July 2013

Signed:

Judith Gleeson

Judge of the Upper Tribunal

APPENDIX A:

Documents before the Upper Tribunal

<u>DATE</u>	<u>SOURCE</u>	<u>DESCRIPTION</u>
<u>UNDATED</u>		
Undated	<i>Asian Legal Resource Centre</i>	"Bribery or corruption and the political system of Sri Lanka"
Undated	<i>Sri Lanka Ministry of Defence and Urban Development</i>	Evolution of Liberation Tigers of Tamil Eelam (LTTE) international network
Undated	<i>Nimmi Gowrinathan, telephoned</i>	Statement on methodology and analysis of the TAG report: "Returnees at Risk: Detention and Torture in Sri Lanka"
Undated	<i>Freedom from Torture²¹</i>	Blank versions of data sheets used by Ms Pettitt during her research on "Out of the Silence" and other reports
Various	<i>First-tier Immigration Tribunal</i>	36 Determinations
<u>2000</u>		
June	<i>Freedom from Torture</i>	"Caught in the middle: A study of Tamil torture survivors coming to the United Kingdom from Sri Lanka"
<u>2006</u>		
2 June	<i>Freedom from Torture</i>	Methodology employed in the preparation of medico-legal reports on behalf of The Medical Foundation
<u>2009</u>		
January	<i>Freedom from Torture</i>	The Medical Foundation For the Care of Victims of Torture
11 September	<i>Amnesty International</i>	"Sri Lanka's displaced face uncertain future as government begins to unlock the camps"
22 October	<i>Foreign and Commonwealth Office</i>	Report of information gathering visit to Colombo Sri Lanka 23-29 August 2009
<u>2010</u>		
11 January	<i>International Crisis Group</i>	"Sri Lanka: A bitter place"

²¹ Previously known as The Medical Foundation for the Care of Victims of Torture

2 February	<i>Human Rights Watch</i>	"Legal Limbo: The uncertain fate of detained LTTE suspects in Sri Lanka"
11 March	<i>US Department of State</i>	2009 Human Rights Report: Sri Lanka
17 May	<i>International Crisis Group</i>	"War Crimes in Sri Lanka"
September	<i>International Commission of Jurists</i>	"Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects"
September	<i>Asian Human Rights Commission</i>	"Bribery and Corruption in Sri Lanka's public revenue system: An unholy nexus?"
3 September	<i>Amnesty International</i>	"Sri Lanka urged to ensure safety of detained former asylum seekers"
October	<i>Danish Immigration Service</i>	"Human Rights and Security Issues concerning Tamils in Sri Lanka"
1 October	<i>Lessons Learnt and Reconciliation Commission (LLRC)</i>	Transcript – Rohan Gunaratna
14 November	<i>TamilNet</i>	"Paramilitary-employed Daya master says ex Tiger members unable to secure jobs"
<u>2011</u>		
2011	<i>Amnesty International</i>	Annual Report 2011: Sri Lanka
2011	<i>Centre for Just Peace and Democracy – Berghof Peace Support</i>	"Political identity of the British Tamil Diaspora: Implications for engagement"
January	<i>Minority Rights Group International</i>	"No war, no peace: the denial of minority rights and justice in Sri Lanka"
February	<i>Amnesty International</i>	"Forgotten Prisoners: Sri Lanka uses anti-terrorism laws to detain thousands"
31 March	<i>UN Secretary-General's Panel of Experts</i>	Report of the Secretary-General's Panel of Experts on accountability in Sri Lanka
21 June	<i>Immigration and Protection Tribunal New Zealand</i>	Decision of B.L.Burson in <i>AG (Sri Lanka)</i> [2011] NZIPT 800092
2 July	<i>Roskilde Festival News</i>	"M.I.A. is giving away money at Roskilde Festival"
18 July	<i>International Crisis Group</i>	"Reconciliation in Sri Lanka: Harder than Ever"
July	<i>UK Border Agency</i>	Sri Lanka: Country of Origin Information Report
19 August	<i>Reuters</i>	"Sri Lanka okays new IDs to boost post-war

		security”
October	<i>Amnesty International</i>	“Sri Lanka: Briefing to committee against torture”
October	<i>Asia Programme</i>	“Sri Lanka: Prospects for Reform and Reconciliation”
6 October	<i>TamilNet</i>	“SL military collects details on ex-LTTE members in Jaffna, Vanni”
November	<i>Freedom from Torture</i>	Submission to the Committee against Torture for its examination of Sri Lanka in November
7 November	<i>Freedom from Torture</i>	“Out of the Silence: New evidence of ongoing torture in Sri Lanka”
12 November	<i>BBC News Sinhala</i>	“LLRC witness rattled by CID summon”
December	<i>Tamils Against Genocide</i>	“Witness Intimidation in Sri Lanka: An overview of Intimidation and Attacks on Witnesses and Victims of Atrocities”
8 December	<i>United Nations Committee Against Torture</i>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
22 December	<i>Transparency International</i>	“Daily Lives and Corruption: Public Opinion in South Asia”
24 December	<i>World Socialist Web Site</i>	“Sri Lanka: Protest in Jaffna over ‘disappearances’”
29 December	<i>TamilNet</i>	“SLA assaults, threatens activists who protest against sand mining in Batticaloa”
<u>2012</u>		
2012	<i>Reuters Institute for the Study of Journalism, University of Oxford</i>	Swaminathan Natarajan: “Media Freedom in post war Sri Lanka and its impacts on the reconciliation process”
January	<i>Human Rights Watch</i>	Sri Lanka Country Summary
January	<i>Tamils Against Genocide</i>	Jan Jananayagam: “Update to Witness Intimidation in Sri Lanka: An overview of Intimidation and Attacks on Witnesses and Victims of Atrocities”
3 January	<i>Sri Lankan Ministry of Defence</i>	“High Commissioner for Sri Lanka & Professor Rohan Gunaratna briefs Australian Parliamentarians”
7 January	<i>TamilNet</i>	“SL military-led administration in North harasses Tamil journalists”
14 January	<i>The Economist</i>	“Disappearances in Sri Lanka: Murky

		Business, People are disappearing and the government has been accused"
16 January	<i>South Asia Terrorism Portal</i>	"Sri Lanka: Government to beef up security to prevent revival of LTTE in the country"
26 January	<i>TamilNet</i>	"Resettled Tamil woman's body recovered near SLA bund in Thenmaraadchi"
February	<i>Intergovernmental Consultations on Migration, Asylum and Refugees</i>	"Sri Lanka: Request from the United Kingdom"
February	<i>Colombo Telegraph</i>	"Practical steps to meaningful reconciliation"
2 February	<i>TamilNet</i>	"TID arrests two Tamil fishermen in Mannar"
8 February	<i>Canadian IRB</i>	"Sri Lanka: The Eelam People's Democratic Party"
9 February	<i>UNHCR RefWorld</i>	"Sri Lanka: Treatment of Tamils in Colombo by members of the Sri Lankan security forces and police; registration requirements in Colombo for Tamil citizens (2007-2008)"
11 February	<i>TamilNet</i>	"Tamil trader abducted in Colombo"
12 February	<i>Tamil News Network</i>	"Colombo threatens Tamils in contact with visiting US delegation"
14 February	<i>TamilNet</i>	"White-van abductors demand 100 million ransom"
14 February	<i>TamilNet</i>	"Occupying SL Army, Police jointly attack Tamil youth in Vanni"
15 February	<i>Colombo Telegraph</i>	"More than 40 notable members of the Sri Lankan community called upon the government of Sri Lanka, in consultation with the Tamil National Alliance (TNA) and the leadership of the Muslims, to take steps to implement the recommendations"
15 February	<i>TamilNet</i>	"Abductions on rise in Colombo"
16 February	<i>Inter Press Service</i>	"Sri Lanka: Terrorists Out, Army In - Part 1"
16 February	<i>Inter Press Service</i>	"Military fills the cracks in Sri Lanka - Part 2"
21 February	<i>IRIN Humanitarian News and Analysis</i>	"Sri Lanka: Calls mount for government action on war inquiry"
29 February	<i>Sri Lankan Ministry of Defence</i>	"UK rejects US based HRW's cynical claims over deportation of bogus asylum seekers"
March	<i>UK Border Agency</i>	Sri Lanka: Country of Origin Information Report

March	<i>Centre for policy alternatives</i>	"The Sri Lankan Case: Rhetoric, reality and next steps?"
March	<i>Foreign and Commonwealth Office</i>	Human Rights and Democracy: the 2011 Foreign and Commonwealth Office Report – Sri Lanka
1 March	<i>Wordpress Website</i>	Ms Jan Jananayagam's entry at http://lteagents.wordpress.com
6 March	<i>TamilNet</i>	"Five ex-LTTE members abducted since February 27"
7 March	<i>UK Border Agency</i>	Sri Lanka Country of Origin Information Report
13 March	<i>Amnesty International</i>	"Locked away: Sri Lanka's security detainees"
14 March	<i>BBC News Asia</i>	"Sri Lanka's sinister white van abductions"
16 March	<i>International Crisis Group</i>	"Sri Lanka's North I: the denial of minority rights"
16 March	<i>International Crisis Group</i>	"Sri Lanka's North II: rebuilding under the military"
22 March	<i>Channel 4 News Online</i>	"UN Human Rights Council urges Sri Lankan accountability"
22 March	<i>Sri Lankan Ministry of Defence</i>	"Threat from LTTE terrorism has not completely died"
23 March	<i>The Guardian</i>	"Journalists are 'traitors', says Sri Lanka's state TV"
23 March	<i>BBC News Asia</i>	"Sri Lanka minister Mervyn Silva threatens journalists"
29 March	<i>English People's Daily Online</i>	"Sri Lanka police stations to be networked"
April	<i>Tamils Against Genocide</i>	Submission to the Universal Periodic Review of the UN Human Rights Council
April	<i>Tamils Against Genocide</i>	"Major General Prasanna Silva: Interview to Sri Lankan Press on his functions in the United Kingdom"
April	<i>UK Border Agency</i>	Sri Lanka Operational Guidance Note
2 April	<i>Daily Mirror (Sri Lanka)</i>	"Search ops to trace LTTE"
4 April	<i>TamilNet</i>	"SL army restricts NGO movement in Batticaloa district"

7 April	<i>TamilNet</i>	"SL military conducts search operations in Trincomalee, 10 Tamils detained"
11 April	<i>Asian Human Rights Commission</i>	"Sri Lanka: Absence of political will to stop abductions"
12 April	<i>TamilNet</i>	"SL military steps up harassment on resettled Tamils in Poonakari"
12 April	<i>Tehelka</i>	"It's all in the family for the Rajapaksa"
15 April	<i>TamilNet</i>	"SL military's draconian 'civil' rule hardens further in Vanni"
18 April	<i>TamilNet</i>	"Tamil student abducted, killed near SL military zone in Jaffna"
18 April	<i>The Human Rights Commission of Sri Lanka</i>	"The Human Rights Commission of Sri Lanka Concern About Disappearances"
20 April	<i>Department of Census and Statistics</i>	"Census of Population and Housing 2011: Population of Sri Lanka by District"
23 April	<i>Daily Mirror (Sri Lanka)</i>	"Major operation in East"
23 April	<i>Tamil Youth Organisation</i>	"Submission to the Universal Periodic Review of the UN Human Rights Council"
23 April	<i>Daily Mirror (Sri Lanka)</i>	"Major operation undertaken in East Province"
25 April	<i>TamilNet</i>	"220 Tamils arrested in SLA combing in Trincomalee"
28 April	<i>TamilNet</i>	"UK deportee killed while Tamil Nadu returnees arrested in Trincomalee"
30 April	<i>Independent Advisory Group on Country Information</i>	"Evaluation report for Country Information on Sri Lanka"
30 April	<i>Ceylon Today</i>	"Several Tamil youth arrested"
May	<i>Tamils Against Genocide</i>	"Treatment of Failed Asylum Seekers: an overview of the persecution faced by failed asylum seekers returning to Sri Lanka"
May	<i>UNHCR</i>	"Results of household visit protection monitoring interviews of Sri Lankan refugee returnees of 2011 (Tool Two)"
3 May	<i>Still Human Still Here</i>	"A commentary on the April Sri Lanka Operational Guidance Note"
5 May	<i>TamilNet</i>	"Ex-LTTE female cadre harassed by SLA commits suicide in 'resettlement' camp"

16 May	<i>BBC News</i>	"Former Sri Lanka Tamil Tiger rebels 'disappear'"
18 May	<i>IRIN Humanitarian News and Analysis</i>	"Thousands missing three years after war ends"
20 May	<i>Sunday Times</i>	"Elam groups still active; military camps in north will remain"
24 May	<i>US Department of State</i>	2011 Human Rights Reports: Sri Lanka
24 May	<i>Colombo Telegraph</i>	"Sri Lanka sets up new courts to try war suspects"
4 June	<i>The Guardian</i>	"Sri Lanka: former Tamil Tigers still searching for reconciliation"
6 June	<i>IRIN Humanitarian News and Analysis</i>	"Sri Lanka: Bane of lost IDs after wartime"
6 June	<i>The Guardian</i>	"Sri Lankan president cancels speech in London"
21 June	<i>CNN-IBNLive (India Breaking News)</i>	"Seven LTTE suspects injured in prison clash in Sri Lanka"
28 June	<i>The Guardian</i>	"We even need permission to bury our dead: Sri Lanka's war legacy lingers"
25 June	<i>ACAT - France / Asian Legal Resource Centre</i>	"When arbitrariness prevails: a study of the phenomenon of torture in Sri Lanka"
1 July	<i>The Sunday Leader</i>	"Sri Lankans Face Identity Crisis"
11 July	<i>The Economist</i>	"Press Freedom in Sri Lanka: Gota explodes"
12 July	<i>TamilNet</i>	"SL intelligence steps up harassment on Tamils in Colombo"
18 July	<i>Tamils Against Genocide</i>	"Sri Lanka's White Vans: Dual criminality of the Sri Lankan State and the Rajapaksa Administration"
20 July	<i>TamilNet</i>	"SL military harasses, confiscates ILRC clearance of ex-LTTE"
22 July	<i>South Asia Terrorism Portal</i>	"Recent unrest in Vavuniya Prison was a conspiracy with links to the LTTE, says police"
25 July	<i>TamilNet</i>	"Gotabhaya schemes 'Guantanamo Bay' in Galle"
28 July	<i>Economic and Political Weekly (www.epw.in)</i>	"Notes on the military presence in Sri Lanka"

30 July	<i>TamilNet</i>	"SL military steps up harassments on ex-LTTE members in Vanni"
2 August	<i>Foreignaffairs.com (published by the Council on Foreign Relations)</i>	"Buddhists behaving badly"
4 August	<i>BBC News</i>	"Inside Sri Lankan's war-torn North-eastern corner"
5 August	<i>Yahoo! News</i>	"Sri Lanka tells troops to remain alert"
8 August	<i>TamilNet</i>	"Mysterious killings target SLA-collaborators from Vanni"
9 August	<i>Sri Lankan News</i> ²²	"A youngster arrested for tattooed LTTE symbol"
10-12 August	<i>Counterpunch Magazine</i> ²³	"Truth and Myth in Sri Lanka"
12 August	<i>Daily Mirror (Sri Lanka)</i>	"Allocate more funds for defence"
17 August	<i>Human Rights Asia</i>	"An innocent man has been in custody"
19 August	<i>Sri Lankan News</i>	"Bomb blast by Pilliyan's gang"
22 August	<i>TamilNet</i>	"Sri Lanka Human Rights Commission distorts figures of missing persons"
27 August	<i>TamilNet</i>	"Another brutal attack sends Tamil political prisoner to coma"
28 August	<i>Human Rights Asia</i>	"Sri Lanka: two more innocent men have been detained for almost three years without being charged"
30 August	<i>TamilNet</i>	"Genocidal sex abuse of ex-LTTE female cadres becomes routine in North and East"
September	<i>Human Rights Watch</i>	"Details of 13 cases - Sri Lankan deportees allegedly tortured on return from the UK and other countries"
September	<i>Independent Advisory Group on Country Information</i>	"Review of the UKBA operational guidance note on Sri Lanka (V13 April)"
September	<i>Freedom House</i>	"Countries at the Crossroads : Sri Lanka"
3 September	<i>Colombo Telegraph</i>	"The hidden dynasty in the justice system"
13 September	<i>Freedom from Torture</i>	"Briefing: Sri Lankan Tamils tortured on return from the United Kingdom"

²² www.athirvu.com

²³ www.counterpunch.org

14 September	<i>Human Rights Watch</i>	"United Kingdom: Halt deportation flight to Sri Lanka"
16 September	<i>Tamils Against Genocide</i>	"Returnees at Risk: Detention and Torture in Sri Lanka"
18 September	<i>Dr Frank Arnold</i>	"Medical Evidence of Torture of Tamils Returned to Sri Lanka"
23 September	<i>The Guardian</i>	"Desecration of the Mass Graves at Mullaivakal"
24 September	<i>BBC News</i>	"Sri Lanka closes huge Manik Farm displacement camp"
29 September	<i>The Hindu</i>	"LTTE continues to be a threat, says Union government"
30 September	<i>Sunday Leader</i>	"Can the judiciary resist the Rajapaksa-tide?"
30 September	<i>Asian Tribune</i>	"Professor Rohan Gunaratne on Sri Lanka's Future, Reconciliation and Commitments of all Communities to build the country"
October	<i>UK Border Agency</i>	Country Policy Bulletin: Sri Lanka v2.0
October	<i>UNHCR</i>	"Monthly report of UNHCR Sri Lanka Refugee Returnee Monitoring (Tool One)"
2 October	<i>World Socialist Web Site</i>	"Australia pressures refugees to return to Sri Lanka"
8 October	<i>Yahoo! News</i>	"Sri Lanka judge stabbed after alleging intimidation"
9 October	<i>TamilNet</i>	"Colombo's militarisation budget to increase by 26%"
10 October	<i>The Economist</i>	"Sri Lanka's judiciary: Enter the goons"
11 October	<i>IRIN Humanitarian News and Analysis</i>	"Sri Lanka: Uneven development in former war zone"
15 October	<i>TamilNet</i>	"UK Tamil tortured in Colombo, returned after payment of ransom to CID"
23 October	<i>David Becker, Home Office</i>	"Correspondence to TAG re: Sri Lanka Policy Bulletin v1"
29 October	<i>Colombo Telegraph</i>	WikiLeaks: Eight thousand IDPs disappeared - Gota To US"
October- November	<i>Amnesty International</i>	"Sri Lanka: Submission to the UN Universal Periodic Review - Reconciliation at a Crossroads: Continuing impunity, arbitrary detentions, torture and enforced

		disappearances”
November	<i>International Commission of Jurists</i>	“Authority without accountability: The crisis of impunity in Sri Lanka”
November	<i>UN Secretary General</i>	“Internal Review Panel on United Nations Action in Sri Lanka”
1 November	<i>International Commission of Jurists</i>	“Press release - Sri Lanka: new ICJ report documents ‘Crisis of Impunity’”
1 November	<i>UN Human Rights Counsel</i>	“Universal Periodic Review: Media Brief Sri Lanka”
15 November	<i>Swiss Refugee Council</i>	“Sri Lanka: current situation”
20 November	<i>International Crisis Group</i>	“Asia Report No. 239 - Sri Lanka: Tamil politics and the quest for a political solution”
20 November	<i>Office of the High Commissioner for Human Rights</i>	“Summary of Stakeholders Information, Working Group on the Universal Periodic Review Fourteenth session”
20 November	<i>TamilNet</i>	“British diplomat briefed on demographic genocide taking place in Trincomalee”
24 November	<i>TamilNet</i>	“Demographic genocide aimed in SL military surveying Batticaloa border villages”
27 November	<i>Ceylon Today</i>	“Probe on LTTE campaign”
27 November	<i>Daily Mirror (Sri Lanka)</i>	“Five persons with pro-LTTE hand bills arrested”
27 November	<i>TamilNet</i>	“Resistance overpowers oppression in observing Heroes Day”
29 November	<i>BBC News: Asia</i>	“Jaffna University Tamil students boycott classes”
29 November	<i>National Post</i>	“Sri Lankan Army deserter gives ‘rare’ insider account of government forces torturing civilians”
2 December	<i>Journalists for Democracy in Sri Lanka</i> (www.jdslanka.com)	“Heavy military presence around Jaffna University, more arrests feared”
4 December	<i>Amnesty International</i>	“Urgent Action: Students at risk of torture following march”
4 December	<i>Countercurrents website</i> ²⁴	“From Rajapaksa Economics to Rajapaksa Justice”
4 December	<i>Journalists for Democracy in</i>	“Three Jaffna University students detained

²⁴ www.countercurrents.org

	<i>Sri Lanka</i> ²⁵	under anti-terrorism laws”
5 December	<i>European Union Press Release</i>	“Local European Union (EU) statement on the rule of law in Sri Lanka”
5 December	<i>Sunday Times</i>	“Sri Lanka placed 79 among 176 nations in the Global Corruption Perception Index: released by Transparency International (TI)”
6 December	<i>BBC News: Asia</i>	“Sri Lanka arrests: Jaffna police detain ‘terror’ suspects”
6 December	<i>Freedom From Torture</i>	“Yet another mass removal to Sri Lanka despite growing international and parliamentary criticism”
6 December	<i>The Daily Mirror (Sri Lanka)</i>	“Ten LTTE suspects arrested by TID”
7 December	<i>Norwegian Country of Origin Information Centre (Landinfo)</i>	“Sri Lanka: Human rights and security issues in respect of the Tamil population in Colombo and the Northern Province”
7 December	<i>US Department of State</i>	“Ongoing concerns on rule of law in Sri Lanka”
8 December	<i>BBC News: Asia</i>	“Sri Lanka chief judge Bandaranayake found guilty by MPs”
8 December	<i>David Jeyaraj blog</i> ²⁶	“‘Judiciary was last remaining institution which the executive could not control with a telephone call’ – JC Weliyamuna”
8 December	<i>TamilNet</i>	“SL ‘Terrorist’ division abducts 18 year old student in VVT, Jaffna”
9 December	<i>The Sunday Times</i>	“Reducing of Sri Lanka’s judiciary to a mockery”
10 December	<i>TamilNet</i>	“Combo hatches new strategies in genocidal war, sidelines EPDP”
11 December	<i>Amnesty International</i>	“Urgent Action: Crackdown on Students Spreads Further”
11 December	<i>IRIN Humanitarian News and Analysis</i>	“Briefing: Sri Lanka’s ethnic problem”
11 December	<i>Journalists for Democracy in Sri Lanka</i>	“Four Jaffna students taken to Welikanda military detention camp”
11 December	<i>TamilNet</i>	“SL military “rehabilitation” for detained University student leaders”

²⁵ www.jdslanka.org

²⁶ www.dbsjeyaraj.com

14 December	<i>Asian Human Rights Commission</i>	Sri Lanka: Rapid fall into Dictatorship
15 December	<i>Colombo Telegraph</i>	"The Constitution and the President's Conscience"
17 December	<i>TamilNet</i>	"40 ex-LTTE members abducted within one week, IOM, UN blamed for silence"
18 December	<i>Sri Lankan News</i>	"40 Ex LTTE members arrested"
18 December	<i>ColomboPage: Sri Lanka Internet Newspaper</i>	"Sri Lanka to release more rehabilitated former combatants to society"
18 December	<i>UN Human Rights Council</i>	"Report of the Working Group on the Universal Period Review, Sri Lanka"
20 December	<i>House of Commons</i>	"Sri Lanka since the civil war"
20 December	<i>Human Rights Watch</i>	"Sri Lanka: Free or Change Detained Students"
20 December	<i>UK Border Agency</i>	"Sri Lanka: Country of Origin Information Service - Bulletin: Treatment of returns"
21 December	<i>UNHCR</i>	"Eligibility guidelines for assessing the international protection needs of asylum-seekers from Sri Lanka"
24 December	<i>TamilNet</i>	"SL military intimidates Tamil villagers for revealing information to UN agencies"
25 December	<i>TamilNet</i>	"Sri Lanka's terror abductions, arrests, summons mark Christmas Eve in Jaffna"
27 December	<i>South Asia Terrorism Portal</i>	"Incident involving the LTTE outside Sri Lanka"
28 December	<i>TamilWin.com</i>	"Tamil National Front Leader Gajenthirakumar was invited for investigation by the crime branch officers"
30 December	<i>The Nation: Online News</i>	"Army thwarts LTTE 'Second Generation Force'"
31 December	<i>Foreign and Commonwealth Office</i>	"Quarterly Updates: Sri Lanka"
<u>2013</u>		
4 January	<i>Lanka News Web</i>	"Rajapaksa men stalk Australian protesters"
8 January	<i>IRIN Humanitarian News and Analysis</i>	"Sri Lanka: Thousands still waiting to return home"
9 January	<i>Independent Television</i>	"Minister Wimal Weerawansa reveals of

	<i>Network News</i>	another LTTE conspiracy to destabilize the country"
10 January	<i>ColomboPage: Sri Lanka Internet Newspaper</i>	"Sri Lanka to release another batch of rehabilitated ex-LTTE cadres"
13 January	<i>The Sydney Morning Herald</i>	"Protestors claim Sri Lankan spy tactics"
13 January	<i>ReliefWeb</i>	"Over 1,200 refugees returned from TN"
18 January	<i>United Nations News Centre</i>	"Removal of Chief Justice 'calamitous setback' for rule of law in Sri Lanka - UN official"
18 January	<i>Online Uthayan - Sri Lanka's Tamil News Website from Jaffna</i>	"44 persons arrested in Jaffna are detained at Booza camp"
22 January	<i>Daily Mirror (Sri Lanka)</i>	"1000 Lankan asylum seekers returned"
22 January	<i>Yahoo! News</i>	"Sri Lanka extends police detention of suspects amid protests"
25 January	<i>Sri Lanka Army Board</i>	"Full report on implementation of the recommendations of the Lessons Learned and Reconciliation Commission (LLRC)"
26 January	<i>Tamils Against Genocide</i>	TAG Mission Statement and Core Aims
27 January	<i>IRIN Humanitarian News and Analysis</i>	"Briefing: Sri Lanka's ethnic problem"
27 January	<i>US Mission Geneva</i>	Text of Resolution L.2 promoting reconciliation and accountability in Sri Lanka
28 January	<i>Amnesty International</i>	Sri Lanka report 2011
28 January	<i>Foreign and Commonwealth Office</i>	Travel Advice: Sri Lanka
28 January	<i>Global Tamil News</i>	"SL Police launches re-registration of Tamil residents in Colombo"
28 January	<i>Human Rights Watch</i>	"Sri Lanka: 'Bait and Switch' on Emergency Law"
28 January	<i>International Commission of Jurists</i>	"Sri Lanka: new ICJ report documents 'Crisis of Impunity'"
28 January	<i>Trevor Grant</i>	Questionnaire on Activist Intimidation
30 January	<i>Human Rights Watch (HRW) Freedom from Torture (FFT) Tamils Against Genocide (TAG)</i>	Statement regarding the extent of Data overlap across respective reports
31 January	<i>Tamils Against Genocide</i>	"Activist Intimidation: An overview of

		surveillance and intimidation of Tamil Diaspora Activists and their supporters”
1 February	<i>Human Rights Watch</i>	“Sri Lanka: Human Rights Failings Detailed - Justice for War Crimes Blocked, Civil Society Attacked.”
1 February	<i>Foreign and Commonwealth Office</i>	Alistair Burt MP’s Speech: “Sri Lanka and beyond”
3 February	<i>The Sunday Times</i>	“Alistair Burt MP: UK to do utmost to see Lanka abides by Commonwealth principles”
5 February	<i>International Bar Association’s Human Rights Institute (IBAHRI)</i>	“Seriously concerned by decision of Sri Lankan government to block entry of high-level delegates”
11 February	<i>Daily Mirror (Sri Lanka)</i>	“Sri Lankan Defence Secretary: Engage constructively with SL – Gota”
11 February	<i>OHCHR</i> ²⁷	“Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka”
20 February	<i>International Crisis Group</i>	“Sri Lanka’s Authoritarian Turn: The Need for International Action”
22 February	<i>Ceylon Today</i>	Chrisanthi Christopher: “No citizenship”
23 February	<i>Sri Lankan Ministry of Defence</i>	Shenali Waduge: “Human Rights Watch 2013 Sri Lanka: Sexual Violence”
26 February	<i>Human Rights Watch</i>	“‘We will teach you a lesson’: Sexual violence against Tamils by Sri Lankan security forces”
27 February	<i>Dr Nihal Jayawickrama</i>	Address to the Bar Human Rights Committee: “The removal from office of the Chief Justice of Sri Lanka”
28 February	<i>Bar Human Rights Committee of England and Wales (BHRC)</i>	Press Release: “Report of Geoffrey Robertson QC into the impeachment of the Chief Justice of Sri Lanka”
4 March	<i>Asian Human Rights Commission</i>	“Sri Lanka: A monk leads mob violence at Maligawatta with the connivance of the police”
6 March	<i>The Sydney Morning Herald</i>	“Claims smugglers pay for navy escort”
6 March	<i>US Embassy for Sri Lanka and the Maldives</i>	“US alarmed by peaceful protestors’ detention”

²⁷ Office of the High Commissioner for Human Rights

APPENDIX B

Agreed Issues for Sri Lanka CG case

1. *Existing country guidance*

- 1A. Has there been any material change which is 'well established evidentially and durable' in the situation in Sri Lanka since *TK* was decided, and if so what effect does that have on the risk factors identified in *LP* and *TK*?
- 1B. In the light of the circumstances in Sri Lanka today, should any risk factors be added, removed or treated as having changed in significance?
- 1C. What is the effect on United Kingdom country guidance (present and future) of the decision of the European Court of Human Rights in *E.G. v UK*, and is the Tribunal bound to follow it?

2. *Circumstances of exit from Sri Lanka*

- 2A. What procedures exist (and/or have existed in the past) to prevent people who are of interest to the authorities from leaving Sri Lanka?
- 2B. What is the relevance to the assessment of credibility or risk where an individual left Sri Lanka via Colombo Airport at a time when they claimed to be at risk from the security forces?

3. *Forcible return to Sri Lanka*

- 3A. What is the procedure used by the Secretary of State when removing documented/undocumented persons to Sri Lanka?
- 3B. What information do the United Kingdom authorities provide to the Sri Lankan authorities (including the Sri Lankan High Commission) or the relevant airline, in relation to those persons removed to Sri Lanka?

4. *Colombo Airport - returnees*

- 4A. What entry procedures do the Sri Lankan authorities have in place at Colombo airport for returning Sri Lankan citizens?
- 4B. Do those procedures differ if:
 - i) A person is seeking to enter the country on a document other than a valid Sri Lankan passport?
 - ii) A person is being forcibly removed to Sri Lanka?
 - iii) A person is being forcibly removed to Sri Lanka on a charter flight, as opposed to a scheduled flight?
- 4C. What information about a returnee is currently available to the Sri Lankan authorities at Colombo airport? If such information is available, what is its source?

- 4D. In what circumstances are nationals of Sri Lanka detained at Colombo airport on arrival?
- 4F. Is a person required on arrival at the airport to provide the authorities with an address where it is proposed he will stay?

5. *Living in Colombo*

- 5A. If a returnee were to pass through Colombo airport and thereafter to reside in Colombo:
- i) Is such a person required to register his presence in Colombo with the authorities?
 - ii) If so, how this is done and what are the consequences of failing to register?
- 5B. What procedures do the Sri Lankan authorities have in place in Colombo to monitor the activities of its residents i.e. checkpoints?
- 5C. Are there are checkpoints (fixed or mobile) in Colombo, and if so, what information about any given individual is available to those who operate the checkpoints?

6. *Issues relating to residence and/or specified activity in United Kingdom*

Is there a real risk of ill treatment when returning from the United Kingdom (voluntary or enforced departure) for Sri Lankan citizens who:

- (i) Have claimed asylum in the United Kingdom;
- (ii) Had actual or perceived connections to the LTTE while in Sri Lanka;
- (iii) Have or had actual or perceived links to the LTTE or to critics of the Sri Lankan government outside Sri Lanka; or
- (iv) Have participated in demonstrations against the Sri Lankan government in the UK or elsewhere?

7. *War crimes witnesses*

Is there any increase or decrease in the risk on return where the returnee has, or may be perceived to have, witnessed alleged war crimes during the final phase of the civil war?

8. *Rehabilitation*

- 8A. What is the rehabilitation process and which Sri Lankan citizens have been expected to undergo it?
- 8B. Is the rehabilitation process itself persecutory, either as a scheme or in its operation?
- 8C. What is effect on risk on return where an individual with actual or perceived LTTE connections has either (a) spent time in the rehabilitation camps, or (b) has not yet undergone "rehabilitation" due to absence from Sri Lanka or other reasons?
- 8D. Does the subsequent treatment of 'rehabilitees' after their release from a rehabilitation centre give rise to a real risk of persecution and/or serious harm?

9. *Other factors which may be relevant to assessment of risk*

- 9A. Is there an enhanced risk to returnees with an actual or perceived connection to the LTTE (other than the 'principal focus' group identified in *TK* at paragraph 76), whether past or current. If so, how serious is that risk?
- 9B. What is the extent of corruption among the security forces and in custody centres in Sri Lanka, so far as relevant to the other issues identified in these appeals?
- 9C. What is the effect on present risk of a person's past release or escape from detention, particularly where this has been achieved by way of bribery?
- 9D. What operational or information links exist between the Sri Lankan security forces and pro-government paramilitaries?
- 9E. Is the risk on return different for individuals claiming to be at risk only from pro-government paramilitaries rather than the Sri Lankan authorities? If so, how does it differ?

10. *In relation to the individual appellants:*

- 10A. **The first appellant** - Would the appellant face a real risk of persecution or serious harm in Sri Lanka, on the basis that his previous detention would become known to the authorities (Direction of UTJ McGeachy dated 140/1/12 at §14)?
- 10B. **The second appellant** -
- (a) Based on the factual findings preserved by the Court of Appeal, would the appellant face persecution and/or serious harm on return?
- (b) On *Devaseelan* principles, what impact do the findings in his brother's appeal have on the credibility of the second appellant's account of interest in him and members of his family since he left Sri Lanka?
- (c) What additional findings of fact in relation to events since the appellant left Sri Lanka should be made, and what effect do such findings have on risk on return for this appellant?
- 10C. **The third appellant** -
- (a) Has this appellant been ill-treated in the past and if so, by whom?
- (b) In the light of the answer to (a) above, is this appellant at real risk of persecution and/or serious harm on return?

APPENDIX C

UKBA EVIDENCE

Malcolm Lewis

1. Malcolm Lewis is currently the respondent's Country Manager of the Returns Team in the Migration Directorate of the Foreign and Commonwealth Office, a post he has held since April 2012. Prior to that he was the Migration Delivery Officer (MDO) in Colombo from January 2008 until March 2012, and it was in relation to that role, continued for a time in the United Kingdom for operational reasons, that he was able to assist the Upper Tribunal.
2. Mr Lewis prepared and served two statements, the first dated 28 January 2013, and the second, filed on 5 February 2013, the day before the hearing. In addition, we had the benefit of hearing his oral evidence. Mr Lewis was responsible for sixteen letters in the public domain, which had been attached to various Country of Origin Reports prepared by the respondent²⁸. The letters were sent from the British High Commission in Sri Lanka (the BHC) to the respondent and recorded Mr Lewis and his locally recruited deputy's observation of the returns process for each such flight. He was aware of, but had no input into, the letters sent by his successor in the period April - July 2012. Letters after that date had been drafted or approved by him, although he was then based in the United Kingdom, with the help of the local Migration Support Officer (MSO), a Sri Lankan citizen employed by the respondent in Colombo and recruited locally. He had helped out, and even returned to Sri Lanka for two short periods, because there was no one else to do it: the MDO role had not been filled again after his successor left it.
3. The information in the statements and letters concerned Mr Lewis' experience and knowledge of the treatment of returnees on charter flights at Colombo Airport, which he had attended with a local MSO. The key points from Mr Lewis' evidence, including his oral evidence, were as follows:
 - (a) The British High Commission (BHC) in Colombo had a good working relationship with the Sri Lankan authorities at Colombo Airport with regard to the return of Sri Lankan nationals who have no leave to enter or remain in the UK. Returning Sri Lankan citizens removed on charter flights from the United Kingdom were met at Colombo Airport by Mr Lewis, the MDO and the locally recruited MSO, who would observe the return and liaise with the Department of Immigration and Emigration (DIE), the State Intelligence Service (SIS), the Police Criminal Investigation Department (CID), the Duty Manager for Airport and Aviation Services (Sri Lanka) Limited and Sri Lankan Airlines (the handling agents for the flight(s)).
 - (b) The BHC liaised regularly with the DIE, SIS and CID who were "wholly aware of the allegations levelled against them by certain human rights groups and sections

²⁸ The letters are dated 13 August 2010, 25 October 2010, 30 January 2012, 24 June 2011, 12 August 2011, 17 September 2011, 3 October 2011, 9 November 2011, 19 December 2011, 5 January 2012, 29 January 2012, 2 February 2012, March 2012, 6 September 2012, 27 September 2012, and 29 October 2012.

of the international media". The DIE, SIS and CID had assured BHC officials that no arriving passengers were subject to ill-treatment at Colombo Airport.

- (c) There had been a change in the procedures at Colombo airport, in response to international pressures.
- (d) There were no specific liaison arrangements for non-charter flight returns, but, in practice the MDO and MSO also regularly visit the above agencies at the airport and witness the routine processing of returnees from a variety of countries.
- (e) Neither Mr Lewis nor his MSO had witnessed any ill-treatment of returnees on arrival to Colombo Airport. Despite receiving allegations of ill-treatment of returnees arriving at the airport, they had not been presented with any "credible evidence" substantiating these.
- (f) As part of the returns process in relation to charter flights, officials from the BHC had improved arrangements at the airport, to facilitate returns and enable returnees to clear security checks quickly, including liaison with the above agencies to ensure they were aware of the time and arrival of the charter flight so that logistics such as seating arrangements and baggage handling were in place. The BHC funded through the Returns and Re-Integration Fund the availability of additional Tamil speaking Immigration Officers at such times, to assist with any language requirements. Post-arrival assistance was offered to every charter returnee via the International Organisation for Migration (IOM) whereby individuals were given the equivalent of £50 for travel to their home area.
- (g) Every returnee was provided with the contact details of the BHC in Colombo should they want to make contact with the MDO or MSO after they left the airport.
- (h) When embarking at Colombo Airport, all departing Sri Lankan nationals were required to complete a departure card. Foreign nationals were not required to do so. The Sri Lankan Bureau for Foreign Employment encourage all Sri Lankan nationals to register with them if they are travelling abroad for work, and DIE officers routinely question their nationals to ascertain the purpose for leaving Sri Lanka. Passports of embarking passengers are also scanned, checking details against DIE databases.
- (i) After each charter flight, Mr Lewis as MDO produced a detailed report in letter format stating all the events from flight arrival until the last returnee had cleared immigration and security controls and was able to depart for home, a practice that has been used since January 2009. Such letters were usually published on the website of the UKBA in either the Country of Origin Information Report or in bulletin form.
- (j) As MDO, Mr Lewis used to compile the letter based on his experience at the airport each time. The contents of the letter included any observations concerning whether the returnees appeared ill or distressed and a description of any particular interest shown by the authorities in a returnee or whether any individual had been detained. Since his return to the United Kingdom, the letters were compiled by his successor MDO or, when he or she has not been in post, by the MSO in which case the letters were cleared with Mr Lewis in the United Kingdom before being forwarded to UKBA.

- (k) In addition, Mr Lewis has also compiled letters whilst covering the MDO role in Colombo. On 2 November 2012, he prepared a letter which was appended to the bulletin of December 2012, in response to several allegations made in the public domain that the situation for Tamils had deteriorated and there was a high risk of mistreatment on return. However, the interviewees were selected on the basis of being involved in the returns process in Sri Lanka. This included Sri Lankan civil society organisations and human rights defenders. The individuals asked not to be identified.
- (l) Mr Lewis attended meetings with the interlocutors between 3 and 17 September 2012 to gather their responses to the questions set out in the letter. Although they were not asked to check the information in the letter before it was published, throughout the interviews their responses were read back to them in order to ensure what had been said was accurately recorded. The letter stated that "... the BHC have not been presented with any credible evidence to substantiate these allegations of ill-treatment of returnees".
- (m) IOM had in the past year dealt with a large number of Sri Lankans returning from West Africa. The processes for such returns were set out in Mr Lewis's letter dated 6 September 2012.
4. In his second statement, was served the day before the hearing, Mr Lewis clarified his understanding of the questions asked by the DIE at the airport. In addition to biographical details (including family members) returnees may also be asked for details of any address with which they had been associated, including their last address in Sri Lanka before leaving the country, their last address in the UK and the address to which they intended to proceed after leaving the airport. They might be asked for historical details such as the names of schools attended, the dates and the profession and names of any former employers, as well as the details of their travel history including when they left Sri Lanka and (including the transport used) about any countries they may have lived in before entering the United Kingdom. They might also be asked for their date of entry to the UK and their reasons for returning to Sri Lanka as well as for details of a person the authorities could contact including their telephone number. Returnees might then be asked to sign a declaration confirming the details provided are true. Returnees from India were asked similar questions.
5. Mr Lewis gave his evidence on the first day of the hearing via video link through a connexion with the British High Commission in New Delhi. He adopted his two statements which he confirmed to be true.
6. In cross-examination, Mr Lewis gave the following further information and clarifications of the evidence in his statements. He was referred to a number of letters written by the BHC to the respondent during 2012. Most of them had been written, or overseen, by Mr Lewis in his role as MDO. There was a short period, from April – July 2012, when a new MDO was in post. He had not contributed to those letters but he had seen them subsequently. Mr Lewis confirmed that he had probably seen all the BHC letters which he had not personally written.
7. Mr Lewis explained that after his return to the United Kingdom, he had remained more closely involved than anticipated with returns to Sri Lanka, since his successor as MDO for the BHC had only remained in post for three months (from April – July

2012) and had not yet been replaced. BHC letters written to the respondent generated during that three-month period had not all been seen by him; although he had seen some of them he had no input into what they said about returnees.

8. After his successor returned to the United Kingdom, Mr Lewis had twice returned to Colombo to cover the MDO role on a short-term basis, between 28 August - 18 September 2012, and for two weeks at the beginning of November 2012.
9. The letters reflected only what the MDO and MSO saw in relation to charter flights: neither of them was required to attend returns on scheduled flights. Mr Lewis had no knowledge of how many returnees travelled on scheduled flights, or whether they constituted the majority of returnees. Whether those returned on scheduled flights were questioned by the DIE depended on the documents on which they travelled, and whether they were escorted or not.
10. In some cases, the airline would notify the Sri Lankan authorities that a passenger was being returned. In such cases, the airline was required to present the passenger to DIE but he was unsure whether in practice this always occurred.
11. Where a passenger travelled on an ETD, Mr Lewis had been told by a DIE spokesman that, under the new Readmission Case Management System (RCMS), such returnees would be identified and records established on their database before their arrival. The same was not true of those who still had travel documents and did not require an ETD. If travelling on their own passport, returnees could usually just walk through and continue their onward journey.
12. Where an ETD was applied for in London, the information obtained by the Sri Lankan High Commission (the SLHC) in London would be fed back to the Ministry of External Affairs in Colombo, who would ensure that it was disseminated to the relevant authorities within Sri Lanka. Under the old system the High Commission would await confirmation from Colombo that the person was accepted to be a Sri Lankan citizen, but now there was more flexibility. The SLHC would interview the person in London and, if satisfied that the appellant was indeed Sri Lankan, even if there were no supporting documents, then the SLHC would ask the DIE in Colombo to issue a travel document, which would be emailed through, stamped in London and the person's photograph added here. There would still be a further interview on arrival, partly for bureaucratic reasons and partly because the DIE would not necessarily trust the judgment of the SLHC in London.
13. Mr Lewis confirmed the evidence in his letter of 5 January 2012 to the respondent, as to the arrangements at the airport. The SIS had an office within the airport, and patrolled the airport. CID also had a 24 hour desk, but did not patrol the airport: they dealt with passengers referred to them by the DIE. The main focus was on DIE concerns about those returning from India. The principle, according to a DIE spokesman (see 2 November 2012 letter) was that all charter flight returnees were referred to SIS and CID, regardless of whether they had a valid passport, but Mr Lewis was aware of instances where that had not occurred.
14. When interviewed at the airport, passengers were required to supply the address where they intended to live in Sri Lanka. Mr Lewis was aware of quite a few cases where the police or army had gone to confirm the address and referred to an earlier system where the CID used to hold a returnee at the airport pending such confirmation but pressure from the international community changed procedures.

The addresses are now checked within seven days following arrival. This could be by the investigation department or the uniformed police.

15. The British authorities do not inform the Sri Lankan government about the background of returnees, including those who commit offences while in the United Kingdom. Returnees disembarking from charter flights are referred by the DIE to SIS and CID who sometimes question the returnee jointly, including questions about the mode of return, the route taken and what they had been doing abroad. They were also asked about any criminal activity in Sri Lanka before coming to the United Kingdom. Mr Lewis had not personally heard questions about whether a returnee was involved with the LTTE, but confirmed, as set out in his letter of 2 November 2012, that an international agency had told him that the questions included whether the returnee had any links to the LTTE and what they had done abroad. The same letter, and the same agency, dealt with returnees retained in the transit area and interviewed for about two and a half hours by DIE officials, then another two hours by the SIS. The number of returnees interviewed in more detail on that occasion was between 20 and 45.
16. There were different locations for CID and SIS within the terminal building. As set out in his letter of 12 December 2012, BHC officials were not normally permitted to be present during the interviews themselves, but there was normally an opportunity to chat to the returnees as they collected their baggage and watch them pass through customs. They were given contact details for BHC which they could use later. Many returnees asked how to obtain a visa to return to the United Kingdom; others asked for help returning to their home villages. Dealing with exit procedures, Mr Lewis confirmed that where a person was on a watch list, swiping their Sri Lankan passport would bring up an alert. A person would only be on such a list, as set out in his letter of 5 January 2012, when an arrest warrant was issued, or a court order made to impound a suspect's passport. In those cases, the person's details would be on an 'alert' or 'wanted' list. Bribery and corruption were widespread and a major problem in Sri Lanka. Once a returnee had left the airport, as set out in his letter of 2 November 2012, the BHC did not monitor their further treatment. The unnamed international agency, however, did meet regularly with returnees. He was aware of BHC community projects involving returnees.
17. The next part of Mr Lewis' evidence was given in camera. He was asked what an MDO would do, if a returnee alleged ill-treatment during their interview at the airport, or subsequently. His evidence was that it depended how such an allegation came to light: sometimes there was direct contact with the BHC, but on other occasions, the accusation would be made by email or even in a press report. The BHC would first check whether a person with the name of the alleged complainant had been returned on a flight from the United Kingdom. They often also checked with the airport authorities to see whether any returnee had been questioned. For example, some years previously, a newspaper had made an allegation regarding someone who had been detained on return from the United Kingdom. Mr Lewis had been able to contact ION who phoned the person in Jaffna. It turned out that that person had not contacted the press and had no wish to complain.
18. In relation to another complainant, Mr Lewis explained that there had been advance contact by a human rights group, several weeks before the complainant returned, saying that he would be mistreated on arrival. On return, there was a complaint of mistreatment, made while the claimant was still detained at the airport, saying he

had been beaten and that his head was bleeding. Mr Lewis had managed to identify the claimant, who indeed was still being processed at the airport, and sent the MSO to see him; the claimant said he had been tortured but did not mention any particular injury. He travelled on, with his family, and two days later, as doctors in Jaffna were unwilling to document his injury, the claimant was invited to travel to Colombo for a medical examination two days later. The report confirmed that abrasions to the claimant's shins were consistent with his account of having been kicked at the airport.

19. Returnees being questioned were not locked in a room but instead sat in an office; however, they would not be allowed to leave until their interviews were complete. The witness accepted that there was evidence of torture in Sri Lanka, but Mr Lewis said that the Sri Lankan airport authorities were not stupid; they knew that the BHC's, and indeed the world's eyes were on the returns process. The authorities would not be so "daft" as to harm returnees at the airport.
20. In cross-examination, Mr Lewis confirmed that an MSO was sent to meet every charter flight. There had been three charter flights in 2011 and four in 2012. In the course of these answers it emerged that the next charter flight had been scheduled to take place on 28 February 2013: a number of Ms Jegarajah's clients had received letters telling them that they would be removed on that date. Mr Hall sought to argue that the date was confidential and ought not to be disclosed, but then took instructions and confirmed the date of 28 February 2013 as the next charter flight.
21. A more streamlined returns system had been implemented towards the end of 2012. Sri Lanka was seeking to improve its processing of readmissions from the European Union. It operated between the Sri Lankan High Commission (in London) and the DIE in Colombo: he was not sure whether the SIS had access to the system. He was not sure if SIS linked into it. Under the Readmission Agreement between the UK and Sri Lankan governments required the United Kingdom to notify the Ministry of External Affairs in Colombo and obtain a flight clearance for charter flights.
22. Mr Lewis was questioned about the respondent's statement that she had not been presented with any credible claims of torture. He was aware of the TAG report dated 16 December 2012. In the absence of a permanent MDO in post, the charter flight reporting letters in June, November and September 2012 were produced by the MSO in Colombo and his role was to rephrase them from London. The MSO recorded all details of what occurred in a notebook and she would draft a letter, which would be forwarded to Mr Lewis. They would discuss it and 'tidy it up', after which it would be passed to a BHC officer to send out. Her draft would be forwarded to him; they would then discuss it, to ensure that nothing had been left out. Otherwise, the 'tidying up' was not for the purpose of making changes of substance.
23. Thereafter, the draft letter would be passed to a BHC officer to send out. He thought the draft was also shown to the Deputy High Commissioner and the Entry Clearance Officer, and in one case, an officer who had accompanied the MSO when she attended a particular flight. Either an Immigration Liaison Officer from London would take the role of the absent MDO, or an Entry Clearance Officer.
24. For the letter written on 2 November 2012, Mr Lewis himself had spoken to the various agencies and written the letter. The agencies did not want their names or identities disclosed, so he could not state whether he had spoken to anyone from

UNHCR, but was able to confirm that IOM was one of the agencies. He had spoken to the Sri Lankan CID but not the DIE.

25. In response to questions from Mr Spurling, Mr Lewis explained that he did not inform the parties concerned when routinely monitoring the airport. He just walked into their offices. Some knew him and some did not. The names of the returnees on the charter flight were given two weeks before an actual flight but the list can change “drastically” in that some drop off and some are added. A lot will have gone to the Sri Lankan High Commission in London for an ETD, although Mr Lewis confirmed he did not know the process from the London end. Attention then turned to the bilateral agreement between the Sri Lankan and the UK government. Mr Hall was unsure if it was an open source document. This aspect was referred to further on in the hearing.
26. Mr Lewis also gave further evidence regarding the layout and arrangements made in the airport for returnees. There was an open area cordoned off near the transfer desk. He confirmed that everyone returning on a charter flight was seen by CID and SIS but he was unable to speak with the same certainty about returnees on a scheduled flight. The interviews by SIS and CID took place in their offices. The interviews by DIE took place in an open area where there was a BHC presence. IMO took on a role after people were waiting for their baggage. He also gave some of his own employment history having started with the Immigration Service in 1979 and had received specific training in interviewing in his role as an Immigration Officer. This had been in Folkestone. He had also received training by the Metropolitan Police and by UK Immigration Service.
27. As to the interlocutors referred to in the letter of 2 November 2012, the eight referred to are the same throughout the report. Whether their identities be disclosed was up to the interlocutors. He confirmed the nature of the interview in which there was dialogue. He confirmed that the MSO speaks Tamil. The role of the CID was to establish if the returnee had a criminal record in Sri Lanka or the United Kingdom or (elsewhere) overseas. The SIS wished to know how the returnee had got to the UK, what he or she had been doing and how they came back.
28. In re-examination Mr Hall asked questions relating to exit arrangements. Mr Lewis explained that these were conducted in an open plan area where there were some fifteen to twenty desks at which people queued. There were computer terminals on each desk which were connected to scanners. Mr Lewis was unable to say that he had witnessed individual Sri Lankan Immigration Officers having turned off the scanners when bribed to enable a party to leave without the passport being read. All terminals were faced from behind by the Chief Immigration Officer who would see someone switch off. He had never seen but had heard stories that Immigration Officers do not swipe the passport. He described the system as modern technology with an old system having been upgraded with new screens.

Mike Gallagher

29. Mr Gallagher is head of the Operational Policy and Rules Unit of the UK Border Agency. He has worked in the unit since 11 June 2012, becoming head of the country of origin information service (COIS) on 9 October 2012. He supervises the process for the production of a number of COI reports and bulletins produced each year on individual countries. He also represents the COIS at its meetings with the

independent advisory group on country information, which acts as an external assessor for the quality of the reports produced.

30. In his statement dated 25 January 2013, Mr Gallagher explained that his role was strictly supervisory. He personally did not undertake research or produce Country of Origin Information Report on individual countries but supervises the process. Additionally he represents the Country of Origin Information Service (COIS) at its meetings with the Independent Advisory Group on Country Information (IAGCI) which acts as an external assessor.
31. Reference is made in Mr Gallagher's statement to the UNHCR handbook, with specific reference to a knowledge of conditions in the applicant's country of origin and the provisions of paragraph 339JA of the Immigration Rules, Mr Gallagher explains the purpose of the Country of Origin Report bulletins and COI documents which is to provide factual information on the objective elements that go into assessing claims for asylum or refugee status. The aim is for the information provided to be up-to-date, relevant, accurate and balanced. Amongst sources used is the Foreign and Commonwealth Office (FCO). In this case the standard procedure is to ask FCO officials to investigate a particular subject by contacting a range of local sources and then document such findings in a disclosable and sourced letter. In order to obtain balanced and accurate information FCO officials are advised to seek a range of views from sources they consider reliable and informed on the subject of interest.
32. The range of country information products provided by COIS includes Country of Origin Information Report which are produced the twenty countries that generate the most asylum applications in the United Kingdom and are updated regularly. In addition there are Country of Origin Information bulletins which are issued when it is necessary to provide information at short notice in response to emerging events. Country of Origin Information Fact-Finding Mission reports are produced following such missions to countries of origin. In addition, Agency officials have access to an information service request which provides rapid responses to specific country-based enquiries. The reports appear on the UK Border Agency website. The IAGCI was established in March 2009 by the Independent Chief Inspector of Borders and Immigration which makes recommendations to the Chief Inspector about the content of material produced by COIS. The Group reviews and considers each Country of Origin Information Report approximately every two to three years and the Sri Lankan report dated March 2012 was reviewed in May 2012.
33. In cross-examination, Mr Gallagher confirmed that a number of the criticisms by Dr Rampton of the IAGCI were accepted as being valid by UKBA (as it then was). Ms Pickup took him through a number of comments which had not resulted in the Country of Origin Report being updated or amended: when pressed, Mr Gallagher's response was in essence to refer to updating bulletins. He did not accept that the criticisms made of the report meant that it was flawed. He expected that the next country report on Sri Lanka would incorporate Dr Rampton's comments, subject to any relevant modification arising out of the situation at the time.
34. Asked by Ms Pickup to explain why the accepted "flaws" in the March 2012 COIS on Sri Lanka had not been incorporated in the 20 December 2012 Bulletin, which appeared just one day before the UNHCR report, Mr Gallagher had no explanation. Mr Gallagher was unaware that the UNHCR report on eligibility guidance for Sri

Lanka was to be published on that day. His evidence was that COIS editorial comment was restricted to the introduction in the report. He referred to Dr Rampton's analysis, with reference to specific examples. The nature of the report was to produce what is known about systemic human rights abuses rather than individual cases. Mr Gallagher explained how sources were evaluated, characterising the British High Commission (the source of letters included in the report) as an accountable organisation.

Jonathan Wright

35. Mr Wright was an assistant director in the respondent's Operational Policy and Rules Unit, part of the strategy and assurance group, based in Croydon. Since April 2012 he has been a member of the Country Specific Litigation Team (CSLT), a small team of country specialists, established to provide the respondent's decision makers with guidance on how to deal with the common categories of international protection claims for each relevant country. Mr Wright's responsibilities include appeals guidance and litigation.
36. CSLT is a small team of country specialists whose prime role is to provide those involved in the decision making process in the UK Border Agency with guidance on how to deal with common categories of claim for international protection. Country-specific guidance to the agency's case owners is primarily provided by the production of Operational Guidance Notes (OGN) for the top asylum source countries and others for which an operational need has been identified.
37. The OGNs were first produced in 2000. They do not replace other publicly-available information or guidance, rather the intention is to supplement them. It is emphasised in the introduction section of each OGN that the agency's case owners must not base their decisions purely on the information contained within, and that it is essential that the guidance provided is read in conjunction with all other relevant information. OGNs are cleared for publication by the Director of the Operational Policy and Rules Unit who is responsible for all guidance across the agency. In addition country information contained in OGNs is also subject to scrutiny by the Office of the Independent Chief Inspector of Borders and Immigration. CSLT ensures that all relevant country information and case law is properly reflected: to ensure the highest standard there is a rigorous quality process involving consultation with internal and external stakeholders and Home Office legal colleagues. CSLT has been working particularly closely with Still Human Still Here (SHSH), described as a significant external stakeholder.
38. The Sri Lanka OGN was first published in 2002 and the latest version is dated April 2012, following the publication of the COI report for Sri Lanka of 7 March 2012 which incorporated information from the Sri Lanka bulletin of 30 November 2011 entitled "recent reports of torture and ill-treatment". That bulletin had been produced by the agency's COIS and included submissions from Freedom from Torture (FFT) made to the UN Committee against Torture (UNCAT).
39. Mr Wright explained that prior to drafting the current version Sri Lanka OGN (version 13) CSLT consulted with case owners within the UK Border Agency "... as to whether the existing main categories for asylum applications from Sri Lankan nationals remain current". Mr Wright reports "no new trends in asylum applications

were highlighted such as from individuals who had previously had valid leave to be in the UK”.

40. The rest of Mr Wright’s statement dealt specifically with aspects of the current OGN and in particular, comments therein concerning the February 2012 publication of an Article by Human Rights Watch dealing with eight anonymous cases of mistreatment on return to Sri Lanka. After publication of the current OGN, in September 2012 HRW published evidence of thirteen anonymous allegations of mistreatment on return. So far as Mr Wright was able to tell, it seemed that the thirteen included the original eight cases and his statement referred to specific passages in the OGN regarding this.
41. Country Policy Bulletins were also issued, on an *ad hoc* basis, aiming to provide clear guidance on how to deal with particular country-specific issues arising in asylum and human rights applications. It was apparent that urgent consideration of the reports by HRW, FFT and TAG published in September 2012 alleging mistreatment of returnees to Sri Lanka was required. It was decided within CSLT that this could be best addressed in a Country Policy Bulletin. CSLT had unsuccessfully requested from HRW and FFT identifying details of the individuals making up the allegations of mistreatment on return (Home Office reference, name and date of birth). To enable the Agency to substantiate the events alleged and the context of the decisions taken. During the present proceedings, TAG provided 21 appeal determinations which for the first time gave those details in relation to 21 of the 26 cases referred to in their report.
42. Of the thirteen HRW cases in the September 2012 publication, only two alleged mistreatment on return from the United Kingdom to Sri Lanka. In one case, that mistreatment occurred six months after return. A third case related to removal from the United Kingdom in 2005, which had not caused difficulty; the allegations there related to a second return to Sri Lanka from Germany after an unsuccessful asylum claim there. The Country Returns Operations and Strategy team (CROS) were asked if they could trace any of those three cases. As records began only in 2012, two of the cases could not be traced: the third claimed to have been removed on a flight on 16 June 2011 but his details did not accord with those of the only relevant male passenger on the flight manifest. There was no record of that male passenger returning to the United Kingdom. Nor was there any trace of a passenger using the name relied upon returning to the United Kingdom.
43. UKBA also wished to examine the cases underlying allegations by FFT and TAG of a trend for student visa holders and their dependents being detained and mistreated on return. The numbers put forward by both organisations were very small when compared to the number of visas issued to Sri Lankan nationals: in 2012 there were 42,633 applications for entry clearance from Sri Lankan nationals. 32,974 visas were issued. In 2011 there were 35,761 entry clearance applications and 26,158 visas were issued.
44. The Country Policy Bulletin was cleared at Director level before publication and was first published on 15 October 2012. Following representations from TAG some changes were made within the report but these did not impact on the overall conclusions; a second version of the Bulletin was published a week later. A further challenge was received on 26 November 2012 from Clifford Chance on behalf of

Freedom from Torture but was not considered likely to result in a change in the Bulletin on this occasion.

Mrs Anita Athi-Parkin

45. In a statement dated 13 February 2013, Mrs Athi-Parkin, a Country Guidance Officer with the respondent, set out the results of the respondent's enquiries in response to the Tribunal's disclosure order. In September 2012, the following question was sent to the Senior Case Working Network for each Asylum Region, which had just under six months in which to provide the information in Mrs Athi-Parkin's statement:

"The question we need to ask you is whether caseworkers have noticed any upward trends in asylum claims on the basis of detention/torture following return to Sri Lanka, even where the individual had not previously sought asylum but had simply been visiting or studying here?"

46. Later, in the context of the country guidance appeals, the responding officials were referred specifically to the applications for disclosure made by these appellants and TAG. Responses were collected and collated until February 2013 when she made her statement. The following general points emerge from Mrs Athi-Parkin's statement:
- (i) the respondent's published website data on asylum applications undergoes a rigorous validation process before publication;
 - (ii) resource and financial constraints rendered it impossible to say what the basis of each individual asylum claim might be, without trawling through all the claims on a case by case basis. The same was true of the basis of asylum grants;
 - (iii) once an individual was granted a visa to come to the United Kingdom, the UKBA did not collate data on their movement thereafter. There was no requirement to do so and it would be 'extremely resource intensive';
 - (iv) an existing visa holder who was ill-treated on return to their home country, then came back to the United Kingdom and claimed asylum, would not be statistically recorded as a returnee. They would simply be listed as new asylum claimants, and it was impossible to extract that data without analysing every individual case;
 - (v) the respondent was able to make available only anecdotal recollections by case owners as to the trend of student visa holders making a first claim for asylum (the "recent returnees" profile). The data could not be robust since it was not recorded;
 - (vi) Between 2009 and September 2012, 5527 Sri Lankan nationals claimed asylum. There were 1115 claims in 2009; 1357 in 2010; 1756 in 2011 and 1299 in the nine months from January - September 2012. The final quarter's figure was not yet known in February 2013 when she made her statement; and that
 - (vii) Enquiries as to whether the Sri Lankan authorities maintained a list of failed asylum seekers had been made. The response is not provided. "The respondent remains unaware whether the Sri Lankan authorities do or do not maintain such a list".
47. Dealing with responses from the ten asylum units, she stated that those responses were not 'the outcome of a rigorous and systematic consideration of all 5527 asylum applications since 2009'. They were simply the reactions of various case-owners, sometimes individuals and sometimes senior case workers. Not all the

regional asylum teams responded. Detained Fast Track and Third Country Unit teams had not been asked at all.

48. The six asylum casework regions that responded, did so as follows:

<u>Region</u>	<u>Incidence of "recent returnees" profile claims</u>	<u>Commentary</u>
Scotland and Northern Ireland	<i>Slight increase</i>	Most claims supported by FFT reports. Outcomes not available
London and SE - Newham and Waltham Forest	<i>2 case owners identifying some "recent returnees" claims.</i>	One stated that between December 2010 and April 2011 she had 31 Sri Lankan claims for asylum of which 18 involved scarring. 4 claimed to be returnees, three directly from the United Kingdom and one via India. No reference numbers or outcomes available.
London and SE - West London	<i>One case owner identified 1 "recent returnees" claim</i>	The claimant came from Colombo, came to United Kingdom as student, returned for personal reasons and left Sri Lanka again on own passport, using an agent. The individual had scarring on his back and arms. He was asked to provide a medical report, which he did. Asylum granted.
North West	<i>One Senior Caseworker reporting "recent returnees" a particularly common claim from Sri Lanka. Another caseworker confirmed 12 "recent returnees" profile cases.</i>	99 claims processed in the Northern Province West since April 2012 <input type="checkbox"/> 26% were "recent returnees" claims. <input type="checkbox"/> 38/99 granted asylum, including 10 "recent returnees" profile. <input type="checkbox"/> 27/99 still awaiting decision. <input type="checkbox"/> 34/99 in appeals process or appeal rights exhausted.
London and SE - Croydon	<i>One Senior Caseworker stated that there had been 22 "recent returnees" profile cases. 8 allowed. Rest refused.</i>	<input type="checkbox"/> 140 Sri Lankan applications in 2012. <input type="checkbox"/> 35/140 granted (8/35 "recent returnees"). <input type="checkbox"/> 60/140 refused with right of appeal. <input type="checkbox"/> 4/140 certified, two removed

- Wales and SW (Cardiff)** *One caseworker had seen 2-4 "recent returnees" claims. Very standard accounts, (set out in statement)*
- Presenting Officers in Wales had not seen many of this profile.
 - Most scarring cases came with FFT reports.
 - 5 recent such cases, one of which withdrew after FFT appointment and took Assisted Voluntary Return, one granted on appeal, two dismissed (removal pursued) and two pending.
 - Cardiff Asylum Casework had received 43 Sri Lankan claims between July 2012 and 1 February 2013, of which 23 still to be decided. 5 granted (reasons not given), 1 withdrawn.

49. Based on this limited, anecdotal survey of asylum caseworkers in her regional offices, Ms Athi-Parkin said this:

“21. ...The respondent refers to the responses above. In the light of the limitations on the data, the respondent accepts that there is a pattern of persons with lawful residence in the United Kingdom who claim to have returned to Sri Lanka, and to have been detained and tortured there, and who have then returned to the United Kingdom and sought asylum. The respondent accepts that some of these individuals have been granted asylum by the Secretary of State or on appeal to the Tribunal.”

50. Mr Hall when introducing this statement described it as demonstrating ‘a small trend’.

APPENDIX D

DR DAVID RAMPTON

51. Dr Rampton is a Fellow in Global Politics at the London School of Economics, with 10 years' experience as a teacher, researcher, consultant and expert in the history, society and politics of Sri Lanka, which was the subject of his doctorate from SOAS, where he studied both as an undergraduate and postgraduate. From 2002-2012, he worked at SOAS as a Senior Teaching Fellow in both the Department of Development Studies and the Centre for International Studies and Diplomacy.
52. He was commissioned by the Independent Advisory Group on Country Information (IAGCI), a body established in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations regarding the content and quality of material produced by the Home Office's Country of Origin Information Service. Such reports are commissioned from persons outside the IAGCI and are used by the Group to inform its report to the Independent Chief Inspector.
53. In that rôle, he has commented on the 2010 and 2012 Sri Lanka Country of Origin report, as well as UNHCR's 2011 Eligibility Guidelines for Sri Lanka. Dr Rampton's criticisms of the report, and the UKBA response, were summarised in his conclusions as follows:

"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 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 to 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."

54. The detail of Dr Rampton's criticism was put to the respondent's witness Mike Gallagher and is dealt with above. The report written for these proceedings does not spend much time on the IAGCI evaluation.
55. Dr Rampton has written expert reports in approximately 30 RMJ funded individual appeals. He has produced a variety of reports involving field work in Sri Lanka, between 2005 and 2011. He regularly acts as a consultant to senior diplomats from the Republic of Ireland, aid officials from DfID, and Norwegian MPs.
56. Dr Rampton's report dealt first with the Sri Lankan government's perceptions in relation to the risk from returning Tamils. The government continued to fear resurgence and its efforts to ensure that the conflict would not re-emerge included increased securitisation of the Northern Province, a high military presence, repression of Tamil political expression and of events such as Pongu Tamil and Mahaveera, and increased requirements for Tamils to register. The situation had moved from one of physical and/or coercive military

action during and after the civil war to leadership programmes seeking to normalise militarisation, and social penetration, for example by intelligence penetration of schools and universities.

57. Failed asylum seekers were seen as a threat on return because of their links to the active Tamil diaspora, which was perceived as inimical to the present structure in Sri Lanka and the fragile peace achieved since May 2009:

“12. ...President Rajapaksa himself ... on multiple occasions in speeches and interviews has blamed the Tamil Diaspora for driving the conflict and for making impossible demands that prohibit a peaceful settlement. For this reason the GoSL has engaged in surveillance of the Tamil Diaspora in European and Western societies as an attempt to prevent and/or contain the (re-)emergence of the LTTE or another militant Tamil nationalist movement. It is worth noting that the LTTE did operate as a global network with offices, funding networks, arms procurement and commercial shipping arms located amongst and directed from pro-LTTE sections of the Tamil Diaspora.

13. As a result, the GOSL's attitude towards failed asylum seekers is that they represent a potential security threat to the Sri Lankan state and society and that any potential suspect aligned to Tamil nationalism must therefore be subject to close scrutiny and investigation by the security and intelligence forces. It is also clear that since the *TK Country Guidance* case of 2009, significant evidence has emerged which indicates that returnees and failed asylum seekers are at considerable risk upon return to Sri Lanka and whilst much of this evidence looks at the post-2009 period, there are also examples that pre-date this as well. Tamils Against Genocide, Freedom from Torture, Human Rights Watch and other journalistic sources have either interviewed returnees and/or compiled multiple cases in which failed asylum seekers and returnees have been subject to the adverse attention of the authorities, degrading conditions of detention and in a significant number of the cases to torture by intelligence and security forces.

Sources asserting that this is the case include investigative journalists from the Sydney Morning Herald who have engaged in interviews with returnees and three rights advocacy organisations who have compiled their data from different cases, but who, in relation to at least two of these reports have the backing of MLRs (Medical-Legal Reports) for the cases they have surveyed.”

58. After return to Sri Lanka, failed asylum seekers are identifiable because they typically lack identity cards and are travelling on ETDs. After setting out the HRW, FFT and TAG evidence, Dr Rampton acknowledges that the BHC in Colombo, the British Foreign Office, Danish and Swiss delegations have stated that Sri Lanka is safe for returning Tamils, those comments are based primarily on visits to Katunuyake and not on monitoring returnees.
59. He considered that there would be a considerably heightened risk on return, for those who might be able to give war crimes evidence, about which the Sri Lankan authorities were very nervous:

“18. ...Where individuals have revealed information that illuminates aspects of the civil war crimes issue (including the scale of civilian casualties), the GOSL has used coercive pressure and/or threat to force individuals to retract statements. Many international observers believe that this was the case with the five Tamil Doctors who had provided medical services in the Vanni during the last phase of the civil war, who after making statements about the extent of civilian casualties were then detained and accused of giving false information to the media by the GoSL. Their original claims and predicament was then backed up by Wikileaks cables between the US Embassy and Washington.

The GOSL has also suffered increasing opprobrium and pressure in the wake of war crimes allegations amongst the international community including a successful US-backed resolution adopted at the UN Human Rights Council in March 2012. All of these factors indicate that however hardnosed the GoSL may appear at times over the civil war crimes issue, it is and always has been concerned to keep as tight a lid as possible on the release of information about the issue. ...”

60. Colombo airport should be regarded simply as the first point of contact and re-profiling on return. The risk of detention, interrogation and torture was higher after clearance than at the airport.
61. He could not comment on reports in the Tamil or Sinhala language media, since he did not read those languages. However, given the pressure on the media and the self-censorship by journalists, the lack of reports within Sri Lanka of the matters complained of outside Sri Lanka were unsurprising.
62. Political changes since the civil war were in the direction of greater state and Presidential control and a move towards authoritarianism:

“20. It should be noted that the intensification of authoritarianism in Sri Lanka has impacted negatively upon both the existing weak checks and balances that existed in the criminal justice/policing system and upon media freedom, both of which have in turn impacted upon the dearth of information and accounts of torture, abuse and degrading treatment suffered by individuals in Sri Lanka for reasons that are outlined in more detail in the paragraphs below. The spread of authoritarianism has been widely noted in the media and academic sources but can be illustrated through a centralization of political power which has removed whatever weak safeguards previously existed in the political system. For instance, the passing of the 18th Amendment to the Constitution in September 2010, which removed the 17th Amendment allowing 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. This included overseeing commissions on policing and rights. The 18th Amendment also removed term limits on presidential office. So although many of the problems with both media freedom and the judiciary are long- standing, it should be noted that the spread of authoritarianism has centralized more power in the hands of the President, his family, his patronage machine and removed the weak existing checks that might prevent abuses operative within state apparatuses. The recent impeachment of the Chief Justice Shirani Bandaranayake is yet another example of the ability of the President to ride roughshod over constitutional procedure out of political fiat. These tendencies do have an impact upon the media and its ability to operate freely and upon the criminal justice system, both of which in turn will affect the willingness of people to speak out where they have suffered abuse, torture and degrading treatment by the authorities and security forces.

21. Firstly it should be noted that any complaint about torture or other mistreatment exists within a generalized situation where access to due judicial process, rule of law and protection is problematic because the judicial system lacks independence, transparency, accountability and safeguards to protect victims of abuse and torture and witnesses to such crimes. This makes the willingness of individuals who have suffered torture or abuse, to report these incidents less likely as they have little assurance of protection from authorities in a situation where it is widely recognized that police and security forces are widely implicated in forms of torture, degrading treatment and abuse in detention and in order to obtain confessions, with reports indicating that it is widespread in Sri Lanka’s policing practices and not just utilized for high-profile targets.

22. These same reports also indicate regular flouting of habeas corpus, irregular trial procedures, intimidation of lawyers and denial of access to legal counsel. Human rights

advocacy reports have also stated that lawyers, the police and judges are deeply inter-dependent socially, professionally and financially and this sometimes precludes the willingness of defence lawyers or judges to challenge police evidence. It is reasonable to deduce that such a context acts as a significant constraint upon the willingness of people to report or publicise incidents where they have suffered torture or abuse and therefore in turn a check upon the quantity of cases that appear in the media.”

63. Dr Rampton gave evidence. He adopted his report. He was asked a few supplementary questions in chief, which elicited that the 6th Amendment to the 1978 Constitution, which enshrined the unitary state in the Sri Lankan constitution in 1985, had been used as a *de facto* proscription of TULF, and to prevent the admission of Tamils to the political process in the 1980s. It had not been used consistently over the years but remained in place.
64. In cross-examination, Dr Rampton repeated his evidence as to the reasons why we should prefer evidence obtained in the United Kingdom, since there was almost no post-arrival monitoring in Sri Lanka of returnees. There was a limited amount of monitoring by IOM, but only for a matter of months. Their evidence might be contaminated, given their intimate connections with the GOSL; it was not unreasonable to assume that an organisation which was close to the government had compromised its ability to engage in a programme concerning the ongoing care of returned asylum seekers. He considered it likely that IOM's independence was compromised and that their monitoring was inadequate. He had no evidence to support this assumption.
65. He regarded TamilNet as a reliable source, positioned as a Tamil nationalist diaspora media source. He had no reason to think that their reports of attacks on those involved with TNA or TNPF were inaccurate.
66. The FFT report concerned those who were lawfully in the United Kingdom; he had broken down the TAG report, which he accepted concerned students, and the FFT evidence, in his report. His own work focused on failed asylum seekers and he had also drawn on evidence which he considered reliable from the World Socialist Website (www.wsws.org) and from the Australian Edmund Rice Centre (www.erc.org.au).
67. Other sources were his own knowledge and contacts within Sri Lanka and the diaspora. He had last conducted field work in Sri Lanka in 2010 and kept in ongoing contact by Skype and other modern means of communication, with friends and colleagues working in the NGO sector in Sri Lanka. The communication was oral and he kept no record of it.
68. He had no reason to doubt reports of abductions and arrests at or near the airport, at bus stops and checkpoints. He relied upon the sources already given; he was not aware of any equivalent to the HRW, FFT and TAG reports from Canada, France, Germany, Switzerland or other international sources, at least since the end of the civil war.
69. Understanding Sri Lanka now required an ideological concept, a dominant 'social imaginary'. Research for his doctorate had focused on the JVP rural counterstate movement in the 1971 and 1970s insurgencies, with the rise of a 'counter elite' among rural youth, reproduced in the Sinhala language nationalist ideology.
70. In re-examination, Dr Rampton clarified the reliability of the sources in the footnotes to his report. His report did not amount to 'going out on a limb' academically. It needed to be understood in context and there was no reason to doubt the reliability of his sources.

APPENDIX E

FREEDOM FROM TORTURE

Professor Sir Nigel Rodley

1. Professor Sir Nigel Rodley is Professor of Law at the University of Essex and since 2001 has been the UK expert on the UNHCR's Human Rights Committee. He has also been a trustee of FFT since 2003, and it was principally in that capacity that he assisted the Tribunal. He is an honorary Fellow of the Faculty of Forensic and Legal Medicine of the Royal College of Physicians. From 1993 to 2001 he served as the United Nations Special Rapporteur on Torture.
2. In 2007, Professor Rodley was appointed by Sri Lankan President Mahinda Rajapaksa to serve on the International Independent Group of Eminent Persons tasked with observing the workings of a Commission of Inquiry established by the Sri Lankan government to investigate serious human rights abuses. He has been the President of the International Commission of Jurists since 2008.
3. As part of his work with FFT, Professor Rodley chaired a sub-committee of FFT's board of trustees, with oversight of that organisation's submissions on Sri Lanka to the UN Committee Against Torture in November 2011, [Exhibits JP/2 and JP/3: see evidence of Jo Pettitt] and its 13 September 2012 Briefing [Exhibit JP/4: see evidence of Jo Pettitt].

Written evidence

4. Professor Rodley adopted his witness statement of 16 January 2013. In this statement he notes that Freedom for Torture is a charity, established in 1985 under the name Medical Foundation for the Care of Victims of Torture. In 2011 it provided treatment to 1200 persons from 80 countries. It prepares between 350 and 600 medico-legal reports per year, mainly for use in "asylum proceedings".
5. Professor Rodley further recorded that based on its clinical work with Sri Lankan victims of torture, FFT has developed serious concerns about removals from the United Kingdom to Sri Lanka of Tamils with real or perceived associations, at any level, with the LTTE. It considers that the United Kingdom's removals policy for Sri Lanka is predicated on a flawed assessment of risk and that UKBA's Operational Guidance Note for Sri Lanka of April 2012, and that its Country Policy Bulletins of October 2012 do not properly reflect the risk of torture on return for Tamils with an actual or perceived connection to the LTTE. The risks to such persons are set out in FFT's briefing paper of 13 September 2012. Despite quoting from this briefing paper in its December 2012 bulletin, UKBA refused to revise its removal policy.
6. Professor Rodley wrote to the Secretary of State for the Home Department on 6 August 2012, alerting her to evidence held by FFT of the risk of torture to Tamils returning from the United Kingdom, including evidence that two persons had been tortured in Sri Lanka after being forcibly returned there. As a consequence FFT was invited to attend a meeting, on 16 August 2012, with the then Immigration Minister and a representative of Human Rights Watch. At that meeting, UKBA refused to review its policy.

7. Shortly thereafter Professor Rodley wrote to the Minister asking him to agree to suspend removals of Tamils whilst the UKBA's policy was changed to reflect the evidence presented to the Minister. In a response of 29 August 2012 the Immigration Minister stated, *inter alia*, that whilst it is acknowledged 'that there continues to be serious human rights abuses in Sri Lanka' there is as yet 'no reliable evidence that the return, particularly from the UK, of Sri Lankans of Tamil ethnic origin routinely results in the detention and potential torture of those individuals'. The Minister asked for further information about the individuals whose circumstances were relied upon by FFT, such as Home Office reference numbers, so that the UKBA could, *inter alia*, substantiate the events that were alleged and then consider the matter in context. FFT declined to provide such information.
8. In a letter of 26 November 2012, FFT explained its actions in this regard on the basis that (i) the FFT briefing of September 2012 provided relevant context for the cases and reported on patterns in its research; (ii) the information sought by UKBA is confidential and FFT is not at liberty to disclose the identities of the relevant individuals; (iii) as an expert witness in proceedings against the Secretary of State for the Home Department it would not be appropriate for FFT to discuss case details directly with the UKBA; and (iv) the purpose of the UKBA seeking the identities of the relevant individuals was queried, given that the veracity of a claim of torture is not dependent on the successful outcome of an asylum application because (a) conclusions made in relation to an asylum applications are not solely dependent on the fact of past torture and (b) FFT Medico-legal reports involve forensic testing of torture allegations and are subject to stringent clinical and legal review processes.
9. Professor Rodley stated in his witness statement that he strongly agreed with FFT's refusal to supply UKBA with identifying details of the cases included in the organisation's research, asserting that to make such disclosures would:
 - (i) involve a serious breach of client confidentiality, as well as being impracticable, since it would be a complicated and labour-intensive process to obtain the consent of each individual;
 - (ii) given the high regard in which FFT was held, including expressly by UKBA, he found it 'difficult' to understand why the UKBA was unable to accept FFT's research findings without verifying them from its own database;
 - (iii) there was concern that UKBA's request could be construed as supportive of efforts by other governments to undermine human rights research by challenging the methods of presenting research, including anonymisation and aggregation of data;
 - (iv) any decision to identify the individuals in its research would act as a deterrent to others asked to take part in the organisation's future research projects;
 - (v) disclosure would not be in the best interests of FFT's clients; and that
 - (vi) as an expert witness in proceedings against the Secretary of State for the Home Department, it would not be appropriate for FFT to discuss case details directly with the UKBA.

10. On 26 November 2012, FFT also wrote to the Treasury Solicitor's Department registering a complaint as to the contents of UKBA's October 2012 Policy Bulletin, in particular asserting that the Bulletin:
 - (i) downplayed 'the forensic nature of the organisation's evidence based on its medico-legal reports and its role as an independent expert witness when preparing such reports';
 - (ii) misrepresented the organisation's calls for a suspension of forced returns of Tamils to Sri Lanka and,
 - (iii) misrepresented the conclusions drawn by the organisation from data presented in its 13 September briefing.
11. The Treasury Solicitor, in a letter to the Administrative Court office on 4 December 2012, acknowledged that complaint, but at the date of Professor's Rodley's statement, FFT had not received a substantive response to it.

Oral evidence

12. In his oral evidence, Professor Rodley adopted his witness statement and was cross-examined. He accepted that even where there was documented evidence of physical or psychiatric damage done to a person, that alone would not demonstrate that an account of torture was true. The clinician's assessment of such harm was not probative of any connection to the LTTE; the most it could prove was the nature of the harm received by an individual, and its consistency with the account that individual gave of the way in which he had received it.
13. He had sat in on a number of examinations of alleged torture victims. He had been surprised how forensic the doctors' questioning was, and how often they picked up on inconsistencies. An individual's reaction was unpredictable: they might speak calmly of the abuse, but begin to cry when recounting an incident of humiliation, and that was a sign of truth.
14. He had confidence in the research by FFT: looking at the whole data set could allow the researcher to notice something which was not apparently significant in an individual case. That was probably true of all research: once the general pattern was clear, one or two divergent cases were probably unimportant. The use of aggregated data was not problematic, in his opinion, and the Tribunal was not entitled to look behind the aggregation: he considered it highly implausible that FFT's experienced doctors would 'have the wool pulled over their eyes' by individuals claiming to have been tortured. On a case by case basis, there were all kinds of ways to break down the analysis of an individual case, but unless most cases were wrong, that would have no effect on the overall pattern.
15. He had worked with the testimony of torture for a very long time. He had been UN Special Rapporteur on Torture for nine years, and had spent 17 years at Amnesty International. As Special Rapporteur, one was often dealing with written submissions and not often coming to case-specific conclusions; instead, he reached general conclusions on the basis of the type of information provided to him, and its source. He had a sense of what was possible, the type of questioning and of the organisational reliability of various bodies. He knew what kinds of information

could be trusted, specifically that from Amnesty International and FFT. Other organisations were more careful before asking governments to respond.

16. Asked whether a medico-legal report (MLR) alone was sufficient evidence of torture, without a successful asylum claim, Professor Rodley said that he considered the evidence represented by an MLR, in certain circumstances, to be more reliable than the decision of an asylum decision maker. Caseworkers, and even Courts, could make mistakes, depending on the quality of representation before them. It was more likely that an experienced forensic medical specialist would reach the correct conclusion. In such cases, the harm done was more conclusive than the individual's account of how it was acquired.
17. Asked why FFT insisted on the confidentiality of the underlying data, Professor Rodley responded that he trusted the data and did not understand why the government wished to examine it, given that FFT was a highly respected organisation. He did not know whether attempts had been made to obtain the informed consent of the individuals concerned, but he was aware that attempts had been made to avoid duplication. Where the individuals were clients of FFT, it might be possible to trace them; however, many of the cases relied upon were referrals from elsewhere, where FFT had less data. He did not know himself what the split was between clients and referrals.
18. Professor Rodley was asked a number of questions which were outwith his primary area of expertise, relating to the signing of blank confessions, 'escapes', and exit routes.
 - (a) **Escapes.** Professor Rodley was invited to comment as to the relevance of the fact that the 13 September briefing did not identify whether persons included within the respective data sets had (i) escaped from detention (ii) had warrants outstanding against them or (iii) had left Sri Lanka using their own passports. His position was that the information was irrelevant both to the assessment of the necessary treatment to give to an individual, and to the assessment of the likelihood of that individual having been tortured in the past, and therefore was not analysed in the aggregation of information for the Briefing.
 - (b) **Confessions.** Speaking about the allegation of Tamils being required to sign 'confession' documents in the Sinhala language, a language they usually could not read, Professor Rodley said that it was not at all unusual for the authorities to brandish such a document, even where a person did not know what he had signed.
 - (c) **Returnees from other countries.** Professor Rodley was not aware whether there had been any international research that suggested that Tamils returned from other places associated with the LTTE were at risk, although he observed that it was common knowledge that the United Kingdom has the largest organised Tamil diaspora.
 - (d) **Exit methods.** Professor Rodley was unable to assist as to ways in which individuals might leave Sri Lanka if they were of adverse interest to the authorities. That was of no relevance in analysing their medical condition and needs. The method of leaving Sri Lanka was not determinative of how a person had been treated while there. He could not

say it was of no relevance for the Tribunal: he did not know enough about the situation in Sri Lanka. He felt that it was ‘clutching at straws’ to seek to discount all the individual cases on the basis of how they left the country, or the circumstances of their leaving detention.

Ms Jo Pettitt

19. Ms Pettitt has been employed as a Researcher at FFT (formerly known as the Medical Foundation for the Care of Victims of Torture) since September 2010. From 2005 to 2010 she worked as a Research Officer in the Research and Information Unit of the Immigration Advisory Service (IAS). She published a number of research papers whilst employed with IAS and has undertaken a number of research projects whilst employed with FFT. Ms Pettitt holds a BA in Social Anthropology from the University of Durham, an MA in Anthropology of Development from Goldsmiths College, University of London, and a Post-Graduate Certificate in Participatory Research from London Metropolitan University and a Post-Graduate Diploma in Applied Social Studies from the University Bristol.
20. Ms Pettitt’s evidence was set out in a witness statement dated 16 January 2013, which exhibited the following documents:

<u>Date</u>	<u>Author</u>	<u>Title</u>
June 2000	<i>Medical Foundation</i>	“Caught in the middle: a study of Tamil torture survivors coming to the United Kingdom from Sri Lanka” [Medical evidence of torture in 49 cases]
2 June 2006	<i>Medical Foundation</i>	“Methodology employed in the preparation of medico-legal reports on behalf of the Medical Foundation”
Undated	<i>Freedom from Torture</i>	Blank versions of data sheets used by Ms Pettitt during her research on ‘Out of the Silence’ and other reports below.
November 7 2011	<i>Freedom from Torture</i>	“Out of the Silence: New Evidence of on-going Torture in Sri Lanka 2009 – 2011” [Summary of MLRs in 35 cases involving torture, committed in Sri Lanka in the post conflict period – 33 involving Tamils]
November 2011	<i>Freedom from Torture</i>	“Freedom from Torture submission to the Committee against Torture ²⁹ for its examination of Sri Lanka in November 2011” [Based on same evidence as ‘Out of the Silence’ report]

²⁹ UNCAT

13
September
2012

Freedom from Torture "Sri Lankan Tamils tortured on return from UK"

[Sent to Minister of State for Immigration, 'detailing 24 cases of Tamils tortured in Sri Lanka after having voluntarily returned from the UK in the post conflict period']

(6 of the 24 cases included in the 35 cases were common to those in 'Out of the Silence' report)]

21. In her witness statement, Ms Pettitt explained that FFT's relatively new Country Reporting Programme had as its object the systematic investigation and reporting of evidence and patterns of torture in particular countries, with a view to holding states accountable for such practices, using international human rights mechanisms, for example UNCAT. Sri Lanka was the first such report which FFT had prepared.
22. FFT's primary source for such research was the individual MLRs prepared by its own medico legal report service. FFT MLRs are detailed reports prepared to Istanbul Protocol standards by specialist clinicians trained to document an individual's history of torture and its physical and psychological consequences, through a process of clinical examination and assessment. The clinicians were required in each case to consider and comment on the possibility of fabrication of evidence by an individual claimant.
23. For research purposes, she had collected both qualitative and quantitative data from relevant MLRs, recorded and aggregated it. The data was then systematically analysed with a view to providing an accurate description of the patterns observed across the data. Where relevant, patterns relevant to aggregates of particular subsets of the data sample, such as ethnic or political profile, were elicited and described.
24. FFT held a rich archive of MLRs relating to torture practices in Sri Lanka during the civil war, and continued to receive a high volume of referrals relating to Sri Lankan nationals. Between January 2010 and June 2012, there had been 240 Sri Lankan referrals for FFT's treatment services. Referrals for Sri Lanka constituted the vast majority of the total referrals to FFT.
25. For the UNCAT submission, Ms Pettitt had used the following criteria to select the sample group: 'all MLRs produced for Sri Lankan clients by FFT from January 2010 to September 2011' with i) evidence of detention and torture from May 2009 onwards and ii) consent to use the MLR data for research. 35 of the 65 MLRs produced for Sri Lankan clients during the relevant period satisfied the criteria. There is no information on the 30 clients who did not give their consent to use their data for research. Quantitative and qualitative data was extracted from MLRs for the 35 who did consent, and was then anonymised and analysed.
26. For the briefing to the Minister of State for Immigration, Ms Pettitt sought to investigate and report on evidence and patterns of torture perpetrated in Sri Lanka since the civil war ended in May 2009, limited to individuals detained and tortured following voluntary return from the UK. The sample group were Sri Lankans who had been lawfully present in the United Kingdom with visas, who returned to Sri

Lanka voluntarily after the end of the civil war in 2009, and were detained and tortured.

27. The sample group was then subdivided into the following three groups:
- (i) **Group 1 [6 cases]:** Cases forensically documented by FFT's Medico-Legal Report Service, January 2010 - October 2011, where the detention and torture occurred from May 2009 onwards.
 - (ii) **Group 2 [6 cases]:** Cases forensically documented by FFT's Medico-Legal Report Service, November 2011 - August 2012 where the detention and torture occurred from 2010 onwards.
 - (iii) **Group 3 [12 cases]:** Cases referred to FFT's London Centre for clinical treatment, November 2011 - August 2012, referrals having been made by either health and social care professionals [10 cases], the Refugee Council [1 case] or a legal representative [1 case].
28. The 13 September 2012 FFT Briefing concludes as follows:

"When looked at together, these 24 cases of Tamil returnees from the UK with a real or perceived LTTE affiliation who were targeted for detention and torture in Sri Lanka demonstrate that torture is on-going despite the conclusion of the civil war. They further indicate that (a) the fact that an individual did not face adverse consequences in the past because of their actual or perceived association with the LTTE *at any level* is not decisive now in assessing risk on return; because (b) return from the UK specifically has been a factor in the Sri Lankan authorities' decision to detain with a view to obtaining further intelligence about historical or current LTTE activity in both Sri Lanka and the UK. They raise the strong concern that Sri Lankan Tamils who have lived in the UK, with a previous or live LTTE association (actual or perceived), are being targeted because they are suspected by the Sri Lankan authorities of (i) being engaged in political activities while living in the UK; and/or (ii) having knowledge about LTTE activity in the UK. There should be a pause in forcible removals of Tamils to Sri Lanka while the UK Border Agency's policy on removals to Sri Lanka is changed to properly reflect this evidence."

29. In her statement Ms Pettitt said that the data used for Groups 1 and 2 was collated from MLRs and other relevant information held in FFT case files, including, for example, their UKBA Statement of Evidence Forms or witness statements produced for their asylum claim.

Data group 1 (FFT UNCAT submission)

30. 35 individuals had been considered in the UNCAT submission and subsequent report. Nine were lawfully in the United Kingdom and had returned to Sri Lanka voluntarily. Six of them returned after the end of the civil war in May 2009 (four in 2009, one in 2010 and one in 2011), and those are the individuals for whom the report assists us.
31. Five of the six were Tamils with an association with the LTTE whilst in Sri Lanka. The sixth, an individual of mixed Tamil/Sinhalese ethnicity, had an immediate family connection to the LTTE, or with an active opposition politician, before coming to the United Kingdom. Four were from the Northern Province or east (the Tamil homelands), one was from Colombo and for one individual the place of origin was

not specified. In each case, it was considered that the Sri Lankan authorities were aware of the LTTE connection.

32. All six were tortured on return, then came back to the United Kingdom and claimed asylum. At the report date, two of the six individuals had been granted asylum (one after an appeal hearing), one was awaiting an asylum decision, and the outcome of the three other asylum applications was unknown.
33. In each of the six cases, the individuals passed through the airport but were detained, either at home or at a checkpoint, within a month of arriving back in Sri Lanka. Two of them were detained twice. Detentions were for periods ranging between two days and three months; four of them were detained for less than a month. All but one of the six was asked about their activities, contact with or knowledge about the LTTE in the United Kingdom (diaspora activities). Three of them did have diaspora activities, having attended at least one demo in the United Kingdom, though only one was an LTTE supporter.
34. Five of the six individuals had numerous scars which were new, between three and five months old. Of these, on average, 11 scars per person were attributed by the clinician to torture. In three cases, some scars were considered to be diagnostic of torture. Three of the individuals in group 1 were also assessed as having reached the diagnostic threshold for PTSD and three for depression.

Group 2 (FFT Briefing to Minister of State for Immigration)

35. There were six Tamil individuals in this group, male and female, whose cases had been forensically documented by FFT's Medico-Legal Report Service between November 2011 and August 2012. In each of the six cases, the appellants had LTTE connections, and in four cases, they also had family connections to the LTTE. Three of them had been tortured by the authorities before coming to the United Kingdom for the first time.
36. Five of Group 2 came from the Tamil homelands in the Northern and Eastern Provinces; one was from Colombo. Four returned voluntarily in 2011 and another in 2012. The evidence showed that all six had been detained and tortured, in 2010 or later, had returned to the United Kingdom, and then claimed asylum. Two were granted asylum on application; one was granted asylum after appealing; another was awaiting a decision and there was no information about the asylum claims of the remaining two individuals. Five of the individuals originated from either the Northern Province or East of Sri Lanka, and one from Colombo.
37. One member of group 2 was detained at the airport on arrival. Of the other five, three were picked up at home and detained; one was picked up in a street near their home, one while reporting at a police station. Three were taken to the place of detention in a white van. Three were detained for less than a month (one of them for less than a week), but one was detained for over six months.
38. Five of the six detentions ended with the individual paying a bribe and being released, but one person was rearrested, detained and tortured again the day after release. All but one of the group were questioned about their actual or perceived LTTE connections, including their own diaspora activities in the United Kingdom and those of others known to them; the authorities asked questions about their

participation in demonstrations, fundraising for the LTTE, and the whereabouts of known LTTE members residing in the United Kingdom.

39. In this group there were on average 17 scars per person which were considered attributable to torture; four of the six individuals in group 2 had scars considered diagnostic of torture, and five also had scars which were typical of torture. The age of the scarring on all six individuals was assessed as between three and eight months old. Four of them were assessed as having reached the diagnostic threshold for PTSD, and four for depression.

Group 3 (treatment referrals to FFT's London centre)

40. There were twelve individuals in group 3, two women and ten men, all Tamils. The source of the data for Group 3 was the details provided by the referrers on the referral forms each submitted and was necessarily more limited than the detailed information in the MLRs which were the source of the data in groups 1 and 2. Seven of them returned to Sri Lanka in 2011, and five in 2012. One was detained on arrival, ten more within a month, but no details were available for the 11th individual in relation to when he was detained.
41. Five of group 3 were arrested after informants identified them as having LTTE associations. Six of this group did have an association with the LTTE. Two of those arrested reported being questioned about diaspora activities (their own and those of others) while in the United Kingdom.
42. Four of group 3 were referred to FFT for clinical treatment in 2011 and eight in 2012. Ms Pettitt stated that six of them had been fully assessed, and accepted for treatment by FFT. Three were current FFT clients, the other three having been treated and discharged. Three of the six had been accepted as refugees; the asylum decisions on the other three cases were still pending.
43. Of the six not accepted by FFT, four had been referred elsewhere and not accepted as FFT clients. The other two had not kept in contact, and their files had been closed.
44. In cross-examination, Ms Pettitt explained that given that the purpose of her research was to investigate patterns of torture, she had not examined the cases of individuals whose allegation of torture had been rejected by FFT. Her assumption, which she had not specifically researched, was that most such cases would be filtered out at the intake stage of the organisation's process.
45. She had worked from documents and records: she had not met any of the individuals whose cases she had documented. The material before her contained more information about some individuals' claimed LTTE associations than she had detailed in the Briefing. The additional information had been omitted in order to preserve the anonymity of those individuals. For those in group 1, the briefing did not provide a breakdown as between those with direct LTTE links, and those with familial links. Information as to whether the authorities were aware of such connections was derived from the information given by the former detainee themselves when being assessed by a FFT clinician. There were occasions when individuals stated that they did not know why they had been detained.
46. The report contained reference to certain individuals having signed a 'confession'. In cross-examination, Ms Pettitt accepted that, although a particular individual might

believe they had signed a confession, where the document they had signed was in the Sinhala language, which usually they could not read, they could not be certain what they had signed. For that reason, she had placed the word 'confession' in inverted commas.

47. The data derived from the cases in group 3 had not been derived from clinical scrutiny and assessment by clinical practitioners at the FFT. It was taken from referral forms completed by social services, and in two cases, by a legal representative and the Refugee Council. She had not sought to identify any equivalent data set from other countries with a large LTTE diaspora, indicating a high incidence of torture for returnees from such country or countries.
48. In re-examination Ms Pettitt stated that she considered it extremely unlikely that NHS clinicians would refer a person to FFT where they did not believe that person to be a victim of torture. Data from cases where individuals had not been considered to be victims of torture would not have any relevance or usefulness in her research and she had sought such data.

APPENDIX F

HUMAN RIGHTS WATCH

Brad Adams

1. Mr Adams is the Asia Director of Human Rights Watch in New York. His evidence was produced at the Tribunal's request, after the main hearings. He had overall managerial responsibility for the Human Rights Watch report: "We will teach you a lesson: sexual violence against Tamils by the Sri Lankan security forces" which was released on 26 February 2013, and of which Ms Hogg's research was a component. It was prepared for the March 2013 UN Human Rights Council sessions.
2. The sequence of events in relation to Mr Adams' statements is that on 12 March 2013, the Tribunal of its own motion directed that he provide a witness statement and make himself available for cross-examination on 15 March 2012 by video link from the United States. We wished Mr Adams to assist us in understanding the sequence of events in relation to the HRW reports.
3. On 14 March, an urgent application was received from Ms Dinah Pokempner, HRW's General Counsel, seeking the discharge of that order for the following reasons: first, that none of the parties had sought Mr Adams' evidence; second, that the respondent was not proposing to argue that the timing of HRW's reports was manipulated in anyway; third, that the arrangements for the video linking and Mr Adams' costs of giving evidence had not been considered and in California, where he lives, it would be night when the Tribunal was sitting; and that, in accordance with the overriding objective, the Tribunal was able to deal justly and fairly with the case without Mr Adams' evidence. The parties confirmed that none of them wished to cross-examine Mr Adams and we therefore discharged the order for oral evidence by video link.
4. We have not therefore been able to see his evidence tested in the normal way. That is unfortunate, since several previous Human Rights Watch press releases and reports in 2012 seemed to have been timed to appear very close to the dates of charter flights returning asylum seekers to Sri Lanka. The same appeared to be the case with the FFT reports in 2012.
5. Mr Adams' first witness statement confirmed that the press releases in May and September 2012 had been released, close to the date of the relevant charter flights, in order to influence both the United Kingdom public and government to prevent the intended returns. However, he denied any link between the February 2013 flight and the latest report. He confirmed that as a Human Rights Watch consultant, Ms Hogg was aware that she was not permitted voluntarily to disclose unpublished names or information without permission, which would be withheld if confidentiality issues were at stake.
6. In a second statement of 13 March 2013, Mr Adams confirmed that it was not Human Rights Watch's case that every Tamil returned to Sri Lanka would be at risk, but referred the Tribunal to his full report for the detailed risk conclusions³⁰. The report was based on

1. ³⁰ <http://www.HRW.org/reports/2013/02/26/we-will-teach-you-lesson-0>

a sample of 75 individuals which it was accepted was not representative. There was no statistical analysis of the division between those detained before and after the civil war.

7. Examples given included recent detentions, both in official places of detention and other places, and the methods of torture used included rape and sexual abuse, as well as:

“...forceful slapping and punching; sustained kicking all over the body; stomping on limbs with hard boots; beatings with batons, rifle butts, electric cables or wires, and sand-filled plastic pipes; being thrown against a wall; hair pulling; partial suffocation by inhaling in a petrol-infused plastic bag; twisting fingers and limbs; and beating the soles of feet.

Also common were burning with a heated metal rod on the back, thighs, and soles of feet; burning with glowing cigarettes; repeated suspension from a metal bar with both hands tied at the wrists; suspension upside down; sleep deprivation including by flashing lights, loud noises, being poked with sticks, or having dry chili powder thrown into one’s eyes; and having one’s head pushed into dirty water.”

8. The recommendations Human Rights Watch had made to the GOSL were as follows:

“V. Recommendations

To the Government of Sri Lanka

- a. Investigate all allegations of rape and other sexual violence by Sri Lankan security forces, including from the armed conflict period as well as the years since. Prosecute those responsible for these crimes, including persons with command or other superior responsibility, in proceedings that meet international fair trial standards. Publicize the outcome of such prosecutions, including by providing information on the punishments meted out and the redress and compensation provided to victims;
- b. Repeal the Prevention of Terrorism Act (PTA), and abolish the system of detention without charge or trial;
- c. Immediately lift access restrictions imposed by the Presidential Task Force on Resettlement, Reconstruction and Security in the Northern Province (PTF) so that;
- d. Release all individuals who have been arrested under emergency or anti-terrorism laws, unless they are charged with recognized criminal offenses. Conduct prompt trials that meet international due process standards;
- e. Make available to family members the names and locations of all individuals detained for suspected involvement in the LTTE, including those in rehabilitation centers and undisclosed detention sites, and facilitate family visits;
- f. Ensure detainees’ right to legal representation and access to a lawyer of their choosing upon being taken into custody and thereafter. Amend current regulations to ensure that all detainees may have legal counsel present during interrogations if they so choose,
- g. Permit all detainees to be examined by an independent medical practitioner immediately after they are detained and following each period of questioning, if they request such examinations;
- h. Establish, maintain, and publicize a centralized database of all detainees, including those detained for “rehabilitation”, providing the dates of arrest and detention, the authority issuing such orders, and all transfer, release and revocation orders;
- i. Ensure all ranks of the security forces, including the military, police, Criminal Investigation Department, and Terrorist Investigation Division, receive regular and appropriate training on civilian protection;

- j. Institute a reparations program in accordance with international standards for all victims of serious human rights violations committed during the armed conflict, including victims of custodial torture;
 - k. Provide reproductive and sexual health services, and psycho-social support for all victims of alleged rape and other sexual violence. Permit appropriate domestic and international nongovernmental organizations to provide these services to individuals in northern and eastern Sri Lanka;
 - l. Ratify the following international conventions: the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Rome Statute of the International Criminal Court; and the International Convention for the Protection of All Persons from Enforced Disappearance;
 - m. Invite and facilitate the visits of UN special procedures including the UN special rapporteur on torture, the UN Working Group on Arbitrary Detention, the UN Working Group on Enforced Disappearances, the UN special rapporteur on violence against women, and the UN special rapporteur on the independence of judges and lawyers. "
9. Mr Adams' second statement repeated that Human Rights Watch had not had any knowledge of the date of the 28 February 2013 flight and had not timed its report for that flight.

Ms Charu Lata Hogg

10. Ms Hogg is an Associate Fellow with the Chatham House Asia Programme. Although her evidence was not expressly tendered on behalf of Human Rights Watch, it emerged during the first day of her evidence that the research which underlay her witness statements had been undertaken for Human Rights Watch and was fettered by the contractual provisions of her consultancy arrangement with Human Rights Watch. It was published at the end of February 2013 in a Human Rights Watch document, *"We Will Teach You a Lesson": Sexual Violence against Tamils by Sri Lankan Security Forces* on 26 February 2013.
11. Ms Hogg described herself as having '14 years of grass roots experience in reporting on human rights and developmental issues' for national and international media in India and Sri Lanka. She had travelled extensively in both countries, interacting with all parties and governments, including as an election monitor. She was last in Sri Lanka in 2008, the year before the civil war ended.
12. From 2003-2006 she was a Sri Lanka consultant with the Coalition to Stop the Use of Child Soldiers , helping develop a policy framework to address the situation of child soldiers in pre and post-conflict scenarios. She later worked as a consultant International Alert, developing work on Sri Lanka and India to examine the potential that shared economic interests could play in building regional peace. From 2007-2009, she worked for Human Rights Watch as a South Asia researcher (India, Sri Lanka, Bangladesh and Nepal) and she continues to work for them as an external consultant.
13. Ms Hogg provided three reports: the first on 21 January 2013, a Supplementary Report on 28 January 2013, and the third, described as her Second Supplementary Report, on 12 March 2013. In her first report, Ms Hogg indicated that she had interviewed 143 individuals, including 13 Tamil asylum seekers with the profile of having returned to Sri Lanka, been tortured, and then returned to the United Kingdom to claim asylum; one

deportee from the United Kingdom; two former Sri Lankan MPs; and eight representatives of civil society organisations. Two of the 13 Tamil asylum seekers were among those considered in the HRW submissions in the summer and early autumn of 2012.

14. Ms Hogg set out the restrictions on what she was able to provide by way of information thus:

"2. The names, place of residence and as well as potentially incriminating details of the dates and locations of victims' detention and abuse have in the majority been withheld to address concerns about their vulnerability to possible reprisals by Sri Lankan security forces should information in this report enter the public domain. I have included information from sources I consider reliable based on my knowledge and experience on Sri Lanka. I have provided as much detail on the sources as can be safely provided. Given the vulnerability of sources in Sri Lanka, I would like to request the court to omit mentioning specific names and details on individual sources in the decision as this could potentially lead to the identification of these sources by Sri Lankan authorities and make them vulnerable to future ill-treatment."

15. After setting out the political history of Sri Lanka and the questions put to her, as well as the documents before her, Ms Hogg quoted Dr Pakiasothy Saravanamuttu of the Centre for Policy Alternatives, as follows:

"30. ... "The current government in Sri Lanka is strong but insecure because of a variety of factors which include on-going allegations of war crimes in its defeat of the LTTE; any development which could potentially challenge its main achievement, the defeat of the LTTE, and thereby contest its success; the fear of loss of protection should the leaders suddenly be stripped of official position and power; and finally the fact that the government is entrenching a dynastic project."

16. Despite its majority in the 2010 elections, the GOSL was authoritarian and sought to exercise 'a stranglehold' over Sri Lanka. A three-member advisory panel appointed by UN Secretary-General Ban Ki Moon in 2010 had still not been permitted to visit Sri Lanka; it was widely viewed as the precursor to a full-blown war crimes trial. The experts' report had been released in April 2011, without a visit to Sri Lanka, and found and criticised widespread, serious human rights abuses in the final phase of the civil war, by both the Sri Lankan government forces and the LTTE. The LLRC was the GOSL's response to international calls for a war crimes trial, but its remit had been limited and international human rights organisations such as Human Rights Watch, Amnesty International and ICG had refused to appear before it, on legitimacy grounds.

17. At paragraph 44 of her report, Ms Hogg stated that:

"44. The situation for minorities in Sri Lanka appears bleak. The state continues to fail to acknowledge legitimate minority grievances that led to the three-decade-long conflict and has made little attempt at promoting and protecting minority rights and freedoms. Since the end of the armed conflict there has been almost no mention of the causes for the conflict or the existence of legitimate grievances of Tamils and Muslims. The armed conflict was fought and won with the rhetoric of it being a 'war on terror' undermining the existence of grievances. Since its victory, the government has not sought to address the root causes of the conflict, despite calls by local minority political parties and many international governments to offer a political settlement acceptable to Tamils and Muslims. This together with restrictions on freedoms and minority rights, and aversion to any effort on justice, accountability and reconciliation is seen by minorities as part of the agenda to suppress them."

18. She recorded the restrictions on press freedom and the attacks on journalists. Those who aligned themselves with western perceptions of what had happened in Sri Lanka were described as 'traitors...betraying the motherland'. There had been riots in Welikade prison as a result of which 27 inmates died. Disappearances and arbitrary detentions continued despite the end of the civil war; the same unspecified 'civil society organisations' had recorded one disappearance, on average, every five days. Tamils in Anuradhapura camp were detained for long periods (two to three years in some cases) but very few were charged with any offence. In 2009, the Senior Superintendent of Police, CN Wakishta, apologised publicly for the delays and asked detainees to regard their detention as a public service, in the interests of breaking the LTTE network. Under the PTA, individuals could be held for up to 18 months without judicial supervision, and moved without notice internally. This increased the risk of abuse. The Sri Lankan constitution did not provide for independent medical examination in prison. Both the now-lapsed Emergency Regulations and the PTA contained impunity provisions; individuals who had been abused were therefore reluctant to come forward.
19. The Sri Lankan judiciary had been under pressure for decades, even before the attempt to impeach the Chief Justice by a Parliamentary Select Committee, which had subsequently been held to be ultra vires. The Chief Justice was removed from her post.
20. Tamil nationalism was alive and well: Tamils still hungered for a homeland. Corruption in Sri Lanka was endemic:

"79. Corruption continues to be widespread and the U.S. State Department (USSD), Country Reports on Human Rights Practices 2009, Sri Lanka, issued on 25 February 2010 observed that:

"The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials in all three branches of the government frequently engaged in corrupt practices with impunity.

80. It would not be incorrect to say that almost every service in Sri Lanka can be purchased for a price. ...

83. Nepotism and clientelism is rife in Sri Lanka and political office has traditionally been used to perpetuate power and accumulate wealth. ... Mahinda Rajapaksa's election as President in 2005 broke the stranglehold of power by a small, higher class clan of political elite. Since then, the government is dominated by the President's family with two of his brothers holding key executive branch posts as Defense Secretary and minister of economic development, while a third brother serves as the Speaker of Parliament. A large number of other relatives, including the president's son, also serve in important political or diplomatic positions. The culture of nepotism goes beyond the echelons of political power and is noticeable in the civil services, judiciary, police and other divisions of state administration."

21. Sri Lanka was 79th of the 176 countries in Transparency International's corruption index.
22. Of the 120 victims, family members and witnesses of torture, whom she interviewed between November 2011 and December 2012, the witness drew the following conclusions:
- (ii) 73 of them had a direct or indirect LTTE association, and 30 of those were members of the LTTE. The rest were wives, girlfriends, brothers and sisters and children of LTTE cadres;

- (iii) All were aged between 16 and 50, and most were from the Northern and Eastern Provinces;
- (iv) The victims had been tortured over the period 2006-2012. Only 31 had been detained and tortured after the end of the conflict; 12 in 2010, 11 in 2011, and 8 in 2012;
- (v) 26 of the victims were picked up and detained in Colombo;
- (vi) The group of those tortured (including sexual abuse) for suspected links to the LTTE included a Sinhalese man and three Muslims, and a member of Frontline Socialist Party;
- (vii) The government's purpose was to prevent the resurgence of the LTTE and the revival of conflict within Sri Lanka. In the Indian Defence Review on 26 April, 2010, Defence Minister Gotabaya Rajapaksa was quoted as saying:

"We cannot allow LTTE terror to come back. The first phase of the civil war is over. The LTTE's war machinery, its fighting ability and its leadership in Vanni have been decimated and destroyed. The second phase of the civil war will be in a different form. So we can't relax. Our operational preparedness must be high, but invisible. Our security strategy has to be in a different form.

We have to develop superior intelligence gathering abilities and mechanisms. We have to develop military intelligence. We have to develop a national intelligence gathering infrastructure. ... We now know how much weaponry, artillery pieces were brought in from the sea by LTTE ships. Therefore, maritime surveillance is of utmost importance to prevent any new group that takes the mantle of LTTE to bring weapons to the country."

- (viii) The GOSL had expanded its military force in the Northern Province. In an interview with The Sunday Leader in May 2012, the Defence Secretary said:

"There is no need now for search and cordon operations or having many road blocks, checkpoints or rounding up people for questioning. That is no longer necessary. But there are other methods to keep vigilant. Especially on the intelligence side - we have increased military intelligence units. We are training them more and more in advanced methods so they can gather information on these affairs and have an early warning. Then we keep an eye on certain people that we know have been engaged in criminal activity. Certain people who have been rehabilitated and released - some have adjusted very well and integrated extremely well... some are working happily in various jobs, some are engaged in their own work. But there are a few people not terrorists but engaged in normal criminal activity. There is a possibility these people may get involved in terrorist activity again".

- (ix) Tamils travelling internally were required to register with the police and in the Northern and Eastern Provinces would be interviewed about their relatives outside the country. No such requirement was applied to Sinhalese internal migrants. Births, deaths, and details of guests received by Tamil households had to be disclosed and permission sought. Weddings, funerals and other private functions had to be notified and photographs might be taken of the guests.
- (x) Paramilitary groups were engaging in abductions for ransom and extortion, in the Northern Province and in Colombo. There had been 32 abductions between October 2011 and February 2012. Amongst the abductions for gain were a smaller

number of abductions for political reasons; it was difficult to assess the proportion. Those individuals were passed to the authorities and were detained and tortured.

- (xi) Those in rehabilitation camps were in detention and should be so considered. Even after release, they were closely monitored, visited regularly in their homes, and could be re-detained if there were perceived concerns about their behaviour and activities;
- (xii) Persons returning to the Northern Province without identity cards or passports were at particular risk of questioning and detention. Obtaining a new identity card required an 'all clear' from local police which according to an unnamed 'civil society' source in Vavuniya was difficult to obtain, even for Tamils with no history;
- (xiii) A person returned without an identity card might well attract adverse interest as a person who had not been screened or been through the rehabilitation process;
- (xiv) Various paramilitary groups had staked out individual territories in Vavuniya and were considered to be responsible in their areas for most of the killings, abductions, extortions, assaults and threats. The EPDP was considered to be working closely with the GOSL, particularly in the Northern Province. Paramilitary groups had no role in peacetime and an economic motive for remaining involved in combat activities;
- (xv) Those now being detained and tortured included former administrators for the LTTE, and forcible conscripts.
- (xvi) Those who had been rehabilitated remained of interest and subject to harassment and monitoring after their release;
- (xvii) Half of those whom she had interviewed had returned voluntarily from the United Kingdom and been detained and tortured. Interest was high, particularly because of the United Kingdom's traditional role in fundraising for the LTTE. The GOSL was also concerned about the current role of the diaspora, and was seeking "to acquire intelligence on the activities of this politically active diaspora, particularly on its contribution to international moves towards an inquiry into alleged war crimes committed by the state in its 2009 defeat of the LTTE" as well as "to send a signal to the diaspora that any involvement in an international campaign against Sri Lanka would result in harsh consequences".
- (xviii) However, she was unaware of any hard evidence of genuine LTTE activity in Sri Lanka, nor any independent evidence of resurgence in the diaspora. Her interviews with experts led to the conclusion that "... while fund raising for the Tamil cause in the diaspora continues to remain active and there remains a residual nostalgia for the LTTE within Sri Lanka, chances of a revival of the LTTE remain dim".
- (xix) The use of torture 'continues rampantly' despite the end of the civil war, with no real change in the patterns of torture or in the use of Sinhalese speakers to inflict harm on Tamils. She did not suggest any change in the list of methods reported by the then Special Rapporteur, Manfred Nowak, after a visit in 2007:

“Methods reported included beating with various weapons, beating on the soles of the feet (falaqa), blows to the ears (“telephono”), positional abuse when handcuffed or bound, suspension in various positions, including strappado, “butchery”, “reversed butchery”, and “parrot’s perch” (or dharma chakara), burning with metal objects and cigarettes, asphyxiation with plastic bags with chilli pepper or gasoline, and various forms of genital torture. This array of torture finds its fullest manifestation at the TID detention facility in Boosa...”

- (xx) There had been no recent large-scale searches in Colombo and there were far fewer checkpoints there now. Tamils still had difficulty in finding work and accommodation in Colombo; for migrants, Tamil community support was required even in densely populated Tamil areas. The migrant Tamil population was in a different position from the integrated Tamils who had been there much longer and spoke Sinhalese. 26 of the former detainees had been picked up in Colombo, mostly because they had direct or indirect associations with the LTTE.
23. In her second statement, Ms Hogg said that the GOSL considered that Tamil Nadu was a centre of LTTE activity, and also, that there was a large LTTE network in Australia. Other countries with LTTE front organisations included: France, Germany, Norway, Sweden, Belgium, Switzerland, South Africa, New Zealand and Canada. The Sri Lankan Defence Ministry website carried an article identifying the following as key LTTE front organisations in various countries across the world:
- Tamil Rehabilitation Organization / International Tamil Rehabilitation Organization),
 - White Pigeon,
 - British Tamil Association (BTA),
 - World Tamil Movement (WTM),
 - Tamil Coordinating Committee (TCC),
 - British Tamil Forum (BTF),
 - Tamil Youth Organization (TYO) (branches in 12 countries including the United Kingdom)
 - Coordinating Committee of Tamils-France (CCTF).
 - Tamil Coordinating Committee (TCC) (in Germany, Norway, Netherlands, Australia, Sweden, South Africa, Belgium & New Zealand)
 - World Tamil Movement (WTM) (Canada); and
 - World Tamil Coordinating Committee (WTCC) (Switzerland).
24. 20,000 children were in Tamil-run schools which were not supervised by the relevant educational systems and were used for propaganda purposes. There were concerns about the curriculum and whether it was being used to train a further generation of insurgents.
25. Only the United Kingdom currently sends charter flights of failed asylum seekers to Sri Lanka. There was some protection at the airport but British High Commission officials did not monitor post-airport returns and the security forces would attempt to pick up those in whom they were interested from the onward address within Sri Lanka.
26. The rehabilitation process was accurately described in the 2012 Country of Origin Report by the UKBA. Rehabilitates were to be detained for a maximum of two years, although there were multiple cases where individuals had been detained for longer. It was

impossible to gauge how many had been rearrested and why, due to the lack of transparent information.

27. The Sri Lankan government was aware that some of those returned were economic migrants.
28. In her third report, published after the 28 February 2013 flight and thus without the constraint imposed on her by Human Rights Watch in the earlier reports, Ms Hogg clarified that 24 of those she interviewed had been picked up in Colombo. 'Most' of those detained were forced to sign a confession in the Sinhala language after being repeatedly questioned and told about their perceived LTTE connections. All but three of those she interviewed had been released after bribes were paid via agents belonging to the Karuna faction, the EPDP, or the Muslim community. She considered that 'escaped' and 'released' were used interchangeably to describe how individuals then left custody.
29. Her interviews were conducted through a trusted interpreter appointed by Human Rights Watch; she had no spreadsheets containing the underlying data; she had not asked whether individuals left Sri Lanka on their own passports; one or two had told her that was what happened, but other said they had used human smugglers.
30. Human Rights Watch had decided that the redaction of facts should include the names of doctors who prepared the medico-legal reports on the individuals Ms Hogg interviewed. That had been their decision, not hers. She had seen evidence from medical practitioners, hospitals and solicitors, and in most cases, asylum interviews, records, and determinations in order to draw her conclusions.

Oral evidence

31. In her oral evidence on 6 February 2013, Ms Hogg adopted her first two reports and was tendered for cross-examination. She told us that she had not personally been to Sri Lanka since 2008. The majority of those she interviewed had been based in Sri Lanka, but of the victims, the majority were not in Sri Lanka. She was not at liberty to say where the victims were. Only five victims, and two deportees were still in Sri Lanka. Thirty-three of the witnesses had accounts relating to the post-war period, and fewer than five of them were in Sri Lanka. She was unable to say where the 13 victims were who featured in the Human Rights Watch reports in the May and September 2012. There had been three which related to United Kingdom returns, two directly from the United Kingdom and one via a third country.
32. She could not say what the breakdown was between Tamils and Sinhalese in the provincial and district elections in Sri Lanka. Some of the district representatives elected were Tamil but the information was not readily available either by GOSL disclosure or on the internet.
33. Asked whether most of the million-strong Tamil diaspora remained committed to a separate Tamil state and were prepared to support violence; she stated that that the issue of Tamil rights was kept alive in the diaspora, which was concerned about the lack of accountability for the events of 2009, and continuing impunity. A resolution had been tabled at the UN Human Rights Committee in 2012. The UN's March 2012 resolution acted as a rallying point for the diaspora, since the internal mechanisms in Sri Lanka were not addressing the problems.

34. Asked again about the support for renewed violence, Ms Hogg said that there was nostalgia for the LTTE and it was fair to say that there was a general feeling of discontent. She had not seen the post-LLRC National Action Plan. She had been told that none of the recommendations had been implemented. She could not reveal her sources among 'civil society' and economic think tanks in Sri Lanka.
35. In the Northern Province, her understanding was that there was active reconstruction of damaged infrastructure, but only by and for the benefit of the Sri Lankan military occupation: banks, restaurants, vegetable shops and so on were being reopened in military hands. Tamils had not participated in the economic growth; they were reduced to the status of witnesses of the reconstruction of the Northern Province.
36. It was impossible to know how many people had been detained under the PTA.
37. In relation to the Jaffna Tamil students who had been arrested while celebrating Martyrs' Day, she did not know whether they had been mistreated in detention. She was aware that some people had been through the rehabilitation process but did not have any idea of the numbers. Her information was confined to the circumstances of individuals who had been through rehabilitation and were subsequently arrested and ill-treated. She had no evidence tending to show that torture occurred during rehabilitation, though she questioned its legality as a process. Her evidence was that some people were picked up again after rehabilitation, and some of those individuals were tortured.
38. When using the phrase 'security forces', Ms Hogg said she meant the army, military intelligence, the police and the TID. She did not mean the SIS and she did not know what the abbreviation meant. Her understanding was that both the military and the police force were involved in national security, with military intelligence police. She was not aware of a specific unit dealing with overseas intelligence gathering, but overseas posts had military attachés.
39. In the majority of cases of which she was aware, family members were not informed of the reason for arrests, or where individuals would be detained. They usually made enquiries within the community, from military outposts and local police stations, not always successfully. She based this on a piece of research she had conducted for Human Rights Watch in 2008, before the civil war ended. A similar pattern had emerged in her 2011-2012 research. Her firm evidence was that the family was never told where people were being held. Whether detention was for the purpose of intelligence gathering was never clear.
40. Intelligence gathering since the civil war had been impressively effective, as some former high ranking LTTE members had cooperated with the authorities. The authorities had good intelligence about LTTE cadres and supporters, both domestically and abroad.
41. Ms Hogg was asked why the authorities would interrogate and torture low-ranking LTTE members now. She stated that that it was difficult to read the mindset of the GOSL and that was not her expertise. She agreed that the GOSL needed to ensure the defeat of the LTTE in order for the present régime to continue in power, and she also accepted that having regard to the huge increases in military spending, the GOSL needed to justify its actions by showing that the LTTE remained a threat. The authorities when they picked up a person, for example on the streets of Colombo, would be seeking a confession confirming what they already knew about that individual's involvement with the LTTE. They were also interested in the involvement of brothers and sisters, spouses, and other family members, or their current location if that was not known.

42. Some of those she interviewed had been picked up at home, some at work, and some outside IDP camps used as rehabilitation centres. They were all questioned about the LTTE.
43. She had personally conducted 69 interviews and had received six reports from medical experts, relating to individuals who could not be interviewed due to their medical state. She had analysed the pickup and detention sites, which security force was involved, the manner of torture and the sexual violence if any. Some individuals had been picked up by the military or the CID. In others, it was unclear, since the individuals had been picked up by persons in plain clothes. She had also asked about the kinds of statement they had been asked to sign following questioning.
44. Ms Hogg said that there was a report due to be published. She was not willing to name the organisation which was going to publish it, but it was for that organisation that her research had been carried out, as a consultant. She was prepared to state that it was an international organisation, and that in a few weeks the report would be in the public domain. She had agreed to give evidence on the basis that the information she had gathered was useful for the purposes of informing the court. She was not going to share unpublished information with the Tribunal.
45. She then stated that in all the cases there was supporting evidence of torture, in the form of medico legal reports. She had interviewed people either in person or over Skype.
46. The Sri Lankan government was insecure and paranoid in security terms. It mattered not whether the LTTE operatives were low-level. She could not say why the government was re-arresting rehabilitated cadres; there was evidence that it was happening. There was a large body of evidence that the Sri Lankan security forces used torture routinely. The psychiatric wellbeing of Sri Lankan Tamils was not the first consideration in the mind of the Sri Lankan state. There was a huge and intrusive military presence in an area which the GOSL considered to be at peace. Even those with a remote association had been targeted for questioning and tortured, for example those who worked in its cultural or education wing, although it had ceased to exist in 2009. Some of those picked up in 2010-11 had participated in activities way back in 2001-2. This evidence was not set out in her report but was implicit and would be in the public domain in another two or three weeks, on or about 28 February 2013.
47. We adjourned Ms Hogg's evidence to await the publication of the report. She was recalled on 15 March 2013 and adopted her second supplementary statement. Mr Hall continued his cross-examination. Ms Hogg stated that all 24 of the individuals now relied upon were drawn from her research for Human Rights Watch, although some had refused permission to identify where they were held when detained and tortured. She had not identified whether they were detained either before or after the end of the civil war in relation to the locations where they were detained.
48. Asked about her experience of interviewing victims of torture, Ms Hogg said that she had interviewed victims from other countries as well as Sri Lanka. All victims understood that when signing a paper written in a language which they did not understand, it was a confession. She had seen confession documents in Sri Lanka in the past but not one signed specifically in connection with the cases in this report. They were always in the Sinhala language, which she did not speak. When she had interviewed victims of torture in the past, as a journalist and a human rights researcher, she arranged for translation of the documents by a reliable interpreter. Language had been a way in

which Tamils were persecuted and kept outside the processes in Sri Lanka. The language issue was one of the contributory factors to the conflict, and the language in court and police stations was always Sinhala. It contributed to the feeling of alienation within the Tamil population; the Sinhalese government used it as a means of controlling the Tamil population. Numerous reconciliation commissions had called for Tamil to be used in police documents and police stations but it had never been implemented. Tamil was not used as the language of official work in Sri Lanka and it would be very surprising to find a 'confession' document written and signed in the Tamil language.

49. There was a lack of due process in Sri Lanka; the interrogating officer was not required to inform individuals or the reason for their arrest, issue an arrest warrant, or inform legal counsel of the arrest. That was just the way it worked.
50. The process of bribing officials to obtain a person's release was complex; once family members noticed an individual was missing, they would have to make enquiries where he was last seen, and at local police stations, and offer a bribe. That might get the information as to where the person might be, and the family would then have to pursue its own investigation within the community, with Sri Lankan officials known to be corrupt, MPs and powerful interlocutors. Just getting the basic information was very elaborate. Officials in the CID and members of armed groups with political authority and 'clout' would also be asked; other sources included persons said to be close to the political establishment, corrupt journos with access to the security forces and the police.
51. Sometimes, a family might have to bribe ten or fifteen people to get access to those holding the detainee; a local police station might not always require a bribe. She did not say that happened in every case. The procedure was open only to those who could afford the bribes; there was a large category of individuals for whom payment was not an option. Some might be able to afford to secure release, but not exit from Sri Lanka. She could not say how much was required to obtain a false passport and leave Sri Lanka irregularly.
52. The interpreters were always present when evidence was given either by Skype or in person; she selected interpreters from her Human Rights Watch contacts and the interpreter would be in a different place from Ms Hogg and the interviewee. Among the small group of victims interviewed outside the United Kingdom, in two cases there were medical reports (not necessarily medico legal reports) corroborating their account of torture. She had included those reports in her reference to MLRs. It was Human Rights Watch's decision that the names of the doctors preparing medico legal reports should not be disclosed. Nothing which might give away the present location of the individuals was to be disclosed unless specifically cleared with the victim. The sexual violence also included evidence from solicitors, but in no case was that the only evidence; it was just part of the package.
53. In re-examination, Ms Hogg was asked again about the language of 'confession' documents, and the purpose of creating such documents. She considered that if legal proceedings were brought in future or the authorities sought to re-arrest an individual based on evidence of previous involvement, the 'confessions' would be used for that. Her own view was that it could be part of a strategy by the Sri Lankan authorities to show that all detained Tamils were LTTE cadres.
54. Confessions under the PTA were not admissible in court but she could not recall whether that was in her report.

Appeal Numbers: **AA/12647/2011**
AA/03791/2011
AA/02916/2009

APPENDIX G

TAMILS AGAINST GENOCIDE

Ms Jan Jananayagam

1. Miss Jananayagam describes herself as Director of, and spokesperson for, Tamils against Genocide (TAG). Her background is in financial technology and business; she works as a fixed income and commodity derivatives trader. She has a BSc in Computing and Information Systems from the University of Manchester and two Masters' degrees, one in Applied Mathematics from Imperial College London, and one from INSEAD Business School in Business Administration.
2. For the last decade, she has been involved with a number of pro bono Tamil community projects, the most recent of which is TAG, for which she has been a volunteer manager and global spokesman since 2009, when the civil war ended in Sri Lanka. She was a columnist on the United Kingdom-based Tamil Guardian newspaper from 2006-2009. Also in 2009, she stood as an independent candidate in the European elections (for the London region) and won 50,000 votes, among the highest number of votes polled by an independent candidate in any European election.
3. Last year, Ms Jananayagam took a one-year sabbatical from her employment and set up TAG Europe. Both TAG and TAG Europe are pro bono organisations, funded by donations and do not charge for their output or services. TAG Europe was responsible for a report entitled 'Returnees at risk: detention and torture in Sri Lanka' published 16 September 2012. TAG organises and finances litigation; 50% of its work is litigation-related, including submissions on war crimes to the International Criminal Court (ICC). She relied on the UNHCR guidelines in December 2012 as indicating that 'certain witnesses and victims of war crimes seeking justice' were a risk category in Sri Lanka now.
4. Her witness statement was based upon the "Returnees at Risk" report, with the intention of updating it. The report had been prepared independently of Human Rights Watch and FFT, with no research or drafts being shared between the three groups. Any similarities in the conclusions were coincidental. There was a limited overlap between the cases considered.
5. The "Returnees at Risk" report was based on United Kingdom judicial determinations on Sri Lanka returnees and had been prepared by a multi-disciplinary team selected by her. It was the only such report anywhere in the world, to her knowledge. The data set was sourced and identified through a small number of intermediate professionals who had professional contacts with suitable asylum seekers and were willing to act as intermediaries. In the third data set, she had direct contact with the external researcher. The request was for 'data relating to asylum cases of persons alleging persecution on return to Sri Lanka from abroad'.
6. TAG found that other non-governmental organisations, including Human Rights Watch, had contacted their intermediate professionals ahead of the TAG researcher, seeking in particular failed asylum seeker cases; the cases passed to TAG tended to be those which had not been passed to other NGOs, in this case, those with no previous failed asylum claim.
7. Two determinations dealing with non-returnees had been excluded from consideration. A total of 27 determinations were relied upon, with one unsuccessful appeal included. The request

had not been limited to successful appeals, but all 27 of those received had medical reports. More determinations had come in subsequently – another eight. The approach to be taken was decided upon after ‘initial eyeballing’ of the data set in September 2012, which threw up some apparent patterns: low level or tenuous LTTE affiliations; questions about a broad variety of United Kingdom diaspora activities; being asked to identify other United Kingdom residents from photographs. The abuse peaked in the three months following the release of the first of the “Sri Lanka’s Killing Fields” documentary by Channel 4, in June 2011.

8. The team was conscious of the small size of the sample and of the lack of balance between successful and unsuccessful appeals. TAG did not claim that this was a representative sample. There were very few failed asylum seekers in the data set; however, if voluntary returnees were at risk, they deduced that failed asylum seekers would be at higher risk. Ms Jananayagam did not find it strange that the sample group did not contain other categories of Sri Lankan returnees from London (tourists and business people). Students were active participants in political protest and were of correspondingly greater interest.
9. The information in the determinations was that ten of the 26 successful claimants had been questioned about political activities, protests, and affiliations while in the United Kingdom. Newer determinations indicated that the airport authorities had video or photographic evidence and were using computer software to identify those who had participated in protests. The information as to what was the reason for interrogation, in the determinations, was often unclear or missing, presumably because of the way in which the appeals were argued.
10. Since the report, there had been the incident with restriction of political protests at Jaffna University; and surveillance and harassment in Australia by the Sri Lankan state of Sri Lankans protesting during Australian cricket. Boat persons from Australia when returned were arrested, interrogated, detained and charged with ‘illegally leaving the country’. Failed asylum seekers were detained for long periods, sometimes months, with perfunctory fortnightly judicial overview.
11. In Sri Lanka, ‘the line between lawful arrest and detention and unlawful abduction and incommunicado detention is blurred’ and there was no effective judicial remedy. TAG had little access within Sri Lanka because of the risk to Tamils involved with NGOs there. Many other diaspora groups within Sri Lanka limited their intervention to aid and development work for that reason. The pressure on the media was heavy, and media attention within Sri Lanka unlikely to increase the chance of release. The GOSL used local media to put across its position on returnees and failed asylum seekers.
12. For these reasons, TAG relied on data gathered from those outside Sri Lanka who no longer needed to fear the authorities there.
13. She dealt with the dispute between the respondent and TAG in the autumn of 2012. On 18 September 2012, TAG disclosed all of the determinations received (including the two which were not related to returnees) to the UKBA. The respondent published her Sri Lanka Policy Bulletin 1/2012 on or around 17 October 2012, ahead of a charter flight planned for 23 October 2012. TAG became aware of it on the day of the charter flight. The report was highly critical of TAG’s “Returnees at Risk” report, including assertions that the TAG data was incorrect ‘as their claims were not based on any return incident’, ‘almost half the asylum claims were not accepted’, and ‘of the 13 determinations submitted to the Agency, three of the claimants did not base their asylum claim on mis-treatment after a return to Sri Lanka from the United Kingdom and a thirds case was a voluntary return from Switzerland, whose alleged ill-treatment occurred 5 months after return’.

14. TAG protested and the Bulletin was amended the next day, with the first and third comments deleted altogether, and the comment about almost half of the asylum claims not being accepted amended to 'the status of almost half of the asylum claims is unclear'. TAG was concerned that in at least two subsequent cases, the Treasury Solicitor had relied on the un-amended version.

Oral evidence

15. Ms Jananayagam adopted her witness statement and was asked some supplementary questions by Ms Jegarajah, before being tendered for cross-examination. She was asked her current understanding of the number of civilian deaths in the final conflict: she replied that over time, the figures had changed. Initially, the numbers were thought to be about 7,000. In May 2010, the International Crisis Group (ICG) had assessed the figure as 30,000; the United Nations Expert Panel considered the range was between 40,000 and 70,000 and had settled on 40,000. Bishop Joseph of Mannar had said that, having regard to the population before the civil war, there were over 146000 missing people. The World Bank, based on population subtraction, had come up with a figure of 100,000.
16. On any view, the figures were huge, and significantly in excess of the deaths at Srebrenica in the Kosovo conflict, when the ICTY considered that 8000 had been executed. Genocide was not a question of numbers but of intention; the international organisations had not used the word 'genocide', hoping that the Sri Lankan authorities would agree to investigate it internally. It was difficult to pin down the exact responsibility any further.
17. She acknowledged that her name appeared on a published list of LTTE "agents" in the diaspora but did not know who was responsible for compiling that list. She considered it indicative of the GOSL's mindset. Her candidacy in the European elections was an attempt to raise the profile of the genocide and to push for an international investigation. The Sri Lankan government had always chosen to confuse the LTTE and Tamils generally, to avoid any suggestion that a two-state solution was appropriate. The suggestion of an armed threat was useful to it. It was very difficult to find political space for Tamils; a little easier since the defeat of the LTTE, but the government wanted to close that space. Since the Amendment 18 to the Constitution of Sri Lanka, the two-state solution was unconstitutional and therefore unlawful, as well as not being feasible in practical terms.
18. The witnesses with whom TAG dealt tended not to wish to disclose any witnessing of war crimes, and if such knowledge were revealed to TAG during their interviews, they asked TAG not to disclose it further. They still had family members in Sri Lanka who would be put at risk, so they were really hesitant. Her opinion was that the Sri Lankan authorities knew which witnesses had evidence that could implicate them.
19. In answer to questions from Mr Spurling, Ms Jananayagam said that the GOSL had made it clear that they were monitoring contacts between diaspora figures and those in Sri Lanka, within the context of the proposed visit of President Rajapaksa to the United Kingdom for the 2012 Royal Jubilee. She knew that local emails and telephone calls were monitored. The government spokesman had said that they "knew what the diaspora was planning", and had intercepted emails. In particular, the diaspora tried to find out who was travelling with the President on foreign visits, with a view to filing a war crimes complaint against those whom they knew to have committed war crimes.
20. At the beginning of his cross-examination, Mr Hall indicated that he would not be asking questions about the genocide allegations, which were a delicate bilateral matter not relevant to the present appeals.

21. Ms Jananayagam made it clear that she was not an expert on the local paramilitaries, save for the “white van” disappearances. She was very prominent and did not personally ask questions or visit Sri Lanka: an email from her was likely to cause problems for its recipient. TAG employed consultants to make enquiries “under cover”.
22. Ms Jananayagam was asked whether it was right to say that no discussion of the dual state solution was possible: the Tamil United Liberation Front, which had taken the political route, was openly articulating the Tamil desire for that solution. Ms Jananayagam replied that all Tamil parties had ‘Liberation’ in their party names. It appealed to the Tamils.
23. The report contained an interview with a person who had come through the rehabilitation camp process. ‘Cadre’ in this context meant a card-carrying member of the LTTE; members in the local areas carried LTTE cards and an identity card; there was a record of their membership. She believed that the LTTE did keep records. The LTTE government had been very organised. She had heard that they used to send memorial letters to the relatives of dead cadres, offering benefits and condolences, though she had never seen such a letter. In December 2011, a potential witness who was a member of a hero family had spoken of such documents and had alleged that the respondent handed them over to the Sri Lankan government. If the membership lists existed, Ms Jananayagam could not say whether they were held centrally, nor what happened to them after the civil war. The GOSL would have spent time trying to find and reconstruct those lists; it did not appear that they already had access to them.
24. TAG’s legal Counsel were there to advise on what TK said; when the “Returnees at Risk” report was prepared, they were not expecting it to go to court. The medical advisers who collaborated were very opposed to any political initiative which might create hostility; they would not be associated with any kind of controversy. Student groups, in Jaffna and in the United Kingdom, had protested the impeachment and subsequent removal from office of the Chief Justice, as had other groups worldwide. It was unusual to get worldwide support for Tamil protests and showed a real shift.
25. In re-examination, Ms Jananayagam said that she had seen mention of LTTE membership cards, but not outside Sri Lanka. In any event, the test should be one of sympathy, not membership. For example, the person in these proceedings who had worked for the Bank of Tamil Eelam was likely to be asked how much money the LTTE had in the Bank, with or without a membership card. TAG classified some people as civilian supporters; those persons were given three months’ basic training and had to carry out some compulsory military service, often with the traffic police. The LTTE had been the *de facto* government in the Northern and Eastern Provinces; there were plenty of civilian jobs for which a membership card was not required. There were judges, civil servants and a whole state infrastructure while the LTTE was in control of those areas.

Mr Alan Keenan

26. TAG also put forward what purported to be an email from Mr Alan Keenan of International Crisis Group. It is not in the usual form for a witness statement, nor is it signed. This is what it says:

“Email Correspondence 1 Feb 2013

Thanks for your interest in the question of the threats to witness with knowledge of war crimes committed in the final months of Sri Lanka's war. I can verify that in my work with the International Crisis Group, I have come across at least one witness (Witness X) living in hiding

outside of Sri Lanka who was approached by a group of Sri Lankan Tamils posing as journalists attached to Channel 4 television in Britain, which, as you know, had earlier produced a powerful and well-publicised documentary entitled "Sri Lanka's Killing Fields". The Sri Lankan team claimed to be seeking evidence of war crimes committed by the Sri Lankan security forces and sought to interview witness X for a follow-up Channel 4 documentary. Witness X declined but put the team in touch with two other Sri Lankan Tamils s/he knew who were willing to describe their experiences in the final phase of the civil war. Witness X never saw her/his two friends again, has not been able to learn of their whereabouts and fears they have been abducted and/or killed. Channel 4 staff involved in making "Sri Lanka's Killing Fields" confirm they never approached witness X and did not work with any of those witness X described. They also confirm that they have heard from credible independent sources that others were also targeted by the same scam. I am not able to name the witness or reveals her/his location in order to protect them from almost certain torture and death should they be located by Sri Lanka military intelligence.

You have my permission to quote me on this case as you see fit."

- 27.** The email, if that is what it was, is not printed as an email. All the identifying details as to time, sender and recipient and so on, are missing.

APPENDIX H

MR CALLUM MACRAE

1. Mr Macrae is an independent journalist and film maker with thirty years' experience, with the Observer, the BBC and Channel 4. He was called to assist the Tribunal because through his production company, Outsider TV, he made two films for Channel 4 dealing with the end of the civil war in Sri Lanka ("Sri Lanka's Killing Fields" [2011] and 'Sri Lanka's Killing Fields: War Crimes Unpunished' [2012]). The Upper Tribunal has had the opportunity to watch the two programmes which remain available on Channel 4OD. Mr Macrae told the Tribunal that a third composite programme, with further material, is in preparation and is expected to be shown towards the end of 2013.
2. In his witness statement, Mr Macrae set out his background, the various awards which the filmmakers received, and the controversy they attracted. The Sri Lankan government complained unsuccessfully to OFCOM which rejected charges of bias, unfairness and inaccuracy. The 2011 film was shown to the UNHCR 17th Session in Geneva on 3 June 2011 at a side meeting and includes footage of discussions with UNHCR representatives before they withdrew from the Northern and Eastern Provinces.
3. Mr Macrae had worked on the films during 2011 and 2012, including visiting Sri Lanka 'undercover'. He had interviewed a wide variety of individuals and groups, in both formal and informal contexts, and was aware of his obligation as a journalist to question, research and challenge what he heard and saw. His opinions in the report were based on a careful assessment of all the evidence gathered over those two years, much of which was not in the films.
4. He set out the history of the Tamil Tigers and of armed Tamil resistance. The LTTE had become the leading Tamil militant group in 1983, accepted by the Tamils in the Northern and Eastern Provinces as the only real and effective defence against the Sri Lankan government's repression of Tamils and 'Sinhalese nationalist terror'. It was his experience that many Sinhala nationalists drew no distinction between the Tigers and Tamil people from the Northern Province.
5. In 2009, at the end of the civil war, the Sri Lankan government established a series of 'NFZs' into which Tamils gathered for safety, only to be ruthlessly and deliberately shelled. The death toll remained uncertain but was at least 40,000. Pronouncements by the GOSL were not to be trusted and were distrusted by British foreign secretary David Miliband, as recently as April 2009, as evidenced by an internal cable exposed by WikiLeaks in which Miliband was alleged to have called the GOSL 'liars' and mentioned 'ongoing civilian deaths there due to government shelling in the conflict zone'. The GOSL had knowingly misled the international community and their assurances that returnees would not be mistreated, tortured or killed, could not be taken seriously. Nor could government statements about the numbers detained in rehabilitation camps be regarded as reliable.
6. The present situation was that rather than the hand of victory being held out to the defeated Tamils, the GOSL seemed to regard Tamils as likely to take up arms again at any moment. The Bishop of Mannar, at the UNHCR meeting in October 2012, had questioned why the army was still in Mannar when the civil war was over. A former UN worker in Kilinochchi, Benjamin Dix (who appeared in the films), was quoted as saying this:

“The reality now is that the civil war with the Tigers has ended but the civil war with the Tamil community continues but by other means. There are still thousands of Tamil civilians that are homeless, their land has been taken by the army. ... Almost every village has an army checkpoint. It is now illegal for groups to meet. [The Tamils] are not allowed to have any public mourning of the dead or any kind of demonstration. ... Under the guise of the redevelopment and reconstruction of the Northern Province what is really happening is this kind of ethnic reengineering of the communities in the North and East of Sri Lanka.”

7. The Sri Lankan Government’s military budget had been significantly increased each year, with a 25% increase expected for 2013; conflict zones remained militarised, with the army settling in for the long term; Sinhalese families were being invited up to the Northern Province and granted land and licences to fish; the Sinhalese military were receiving hundreds of pounds in bonuses for third children; and the military were running farms, shops and hotels. Tamils remained homeless, their fishermen were marginalised and their industry destroyed. The Catholic Diocese of Jaffna’s Commission for Justice and Peace had spoken of a full-scale ‘Buddhisization’ of the Northern Province. President Rajapaksa’s Defence Secretary, his brother Gotobaya Rajapaksa, had recently told the BBC that it was ‘not appropriate to view the Northern Province of the country as a predominantly Tamil area’.
8. The GOSL had a confusing approach to the Lessons Learned and Reconciliation Commission (LLRC). The Ministry of External Affairs had announced in December 2011 that it would take legal action against organisations which criticised the LLRC, but many of its recommendations had been ignored. In particular, the recommendations that the security forces should disengage from civil administration related activities; that the GOSL facilitate the Tamil people’s attendance at religious ceremonies, peaceful events and meetings, without restriction; and that the GOSL set up a separate event on the National Day ‘to express solidarity and empathy with all victims of the tragic conflict. Dr. Shirani Bandaranayake, then Chief Justice of Sri Lanka had ruled unconstitutional a law which would weaken provisions for local autonomy in the Northern Province, describing her action as ‘implementing [the late LTTE founder and leader] Prabhakaran’s agenda in another form’.
9. In relation to risk on return, the Sri Lankan Army Board was of the opinion that the overseas Tamil diaspora was attempting to destabilise Sri Lanka and constituted “a clear and present danger” to the national security of Sri Lanka. Foreign journalists (including Mr Macrae himself), British members of parliament and international non-governmental organisations had all been accused of supporting or being funded by the LTTE. Mr Macrae had learned that some people had been arrested in Sri Lanka and accused of helping his company with the “Sri Lanka’s Killing Fields” programmes, even though he had not interviewed them and they were not involved. The Bishop of Mannar had written to the Australian authorities to say that people deported from Australia to Sri Lanka were regarded as traitors by the GOSL and the military.
10. Mr Macrae noted the pressure put on those who might have, or had, witnessed war crimes, particularly in the NFZs. Tamil government doctors who remained in the civil war zone had been detained and held in custody for weeks before they recanted publicly their evidence during the civil war about the scale of deaths and the withholding of medical supplies by the GOSL. Examples were given of individuals who have been killed or pressured to retract their accounts of what occurred. There was a particular risk to journalists; the founding editor of the Sunday Leader, Lasantha Wickremetunge, had been shot dead driving to work, in an assassination he expected, and for which he had prepared an editorial, to be published in the event of his death. Mr Macrae described this as an

extrajudicial execution, while acknowledging that in general, the GOSL showed restraint with well-known figures. Nevertheless, according to the World Bank, 100,000 Tamils remained unaccounted for at the end of the civil war.

Oral evidence

11. Mr Macrae gave oral evidence. In supplementary evidence-in-chief, he stated that there had been no peace dividend: there had been a 25% increase in the Sri Lankan Ministry of Defence budget and the GOSL was constructing permanent barracks accommodation for the vast number of troops stationed in the Northern Province, often on culturally significant Tamil territory.
12. The GOSL was seeking to change the ethnic makeup of the Northern Province and systematically undermining the Tamil economy in the guise of rebuilding the Northern Province, reengineering the economy there to marginalise Tamils by extraordinary measures. Payments of several hundred pounds were available to soldiers settling in the Northern Province who had a third child; in the meantime, thousands of Tamils remained homeless. Bonuses were being paid to Sri Lankan fishermen; the army was running farms, businesses and shops, and the military were building and running hotels. The Sri Lankan navy provided whale watching trips for tourists; the air force ran helicopter trips.
13. There was some genuine reconstruction; roads were being rebuilt with government subsidies and rehousing the Tamils was beginning, but the GOSL's investment in the Northern Province was intended to change it and prevent its being regarded as a Tamil homeland.
14. Referring to his films, Mr Macrae said that while most of the material shown came from within Sri Lanka, much of it filmed during the final conflict, within the so-called 'No-Fire Zones', some of it came from all over the world. He had not tried to get into the Vanni area himself; Channel 4 would not be allowed in there. Channel 4 had some discussions on the possibility of returning and working in Colombo on the 2013 film; the team had received security advice that even for a GOSL-sponsored visit they should change their routes regularly, and refrain from either eating in their own hotel or moving around at night.
15. His perception was that it was extremely dangerous to be a government critic in Sri Lanka. Overseas media workers had been 'kicked out' and almost 60 local media workers had been killed. Channel 4 had been asked to leave during the civil war for criticising what was going on in the camps and interviewing liberated hostages. At a gathering of the Commonwealth Heads of Government in Perth, Australia, in 2012, the Sri Lankan President's media adviser had attacked Mr Macrae's work on camera, waving his finger and saying that Mr Macrae's films for Channel 4 were funded by the LTTE, and "absolutely part of the global conspiracy to restart the civil war".
16. The GOSL was paranoid about its international reputation. If the programme had returned to Colombo, neither the media workers involved with it, nor any witness, would be safe. Mr Macrae was aware of a person with 'incredibly important' evidence who still would not come forward because they still had relatives in Sri Lanka. There were endless such examples.
17. The GOSL in his opinion had a huge distrust of the Tamil diaspora worldwide, but the diaspora itself was riven with dissension and penetrated by GOSL agents. The mistrust was well-founded and the evidence really strongly suggested that the Tamil factions were right to distrust each other.

18. Cross-examined by Mr Hall, Mr Macrae said that he had last been in Sri Lanka around the time of the Japanese tsunami (April 2011). One of their objectives then was to meet witnesses, journalists, and government agents, to get pictures and some video evidence. They had discovered a culture of fear with a large number of “white van” disappearances. The appearance of a white van outside the home of a government critic struck terror; people were bundled into them and often never seen again. The GOSL had attacked journalists, lawyers, and was now even impeaching the former Chief Justice of Sri Lanka.
19. Tamils were by definition regarded as government critics and indistinguishable from the LTTE. That approach, dating from the civil war, had allowed the massacre of Tamils during the final conflict; it suited the Sri Lankan government and was still used and fostered by GOSL. Merely criticising the GOSL was enough to put your life in danger. 140 Tamil women had been recruited into the armed forces.
20. There were deep concerns as to what went on in the camps. A group of five or six Tamil government doctors, working in the NFZs, had bravely sent messages that hundreds had been killed, and that the GOSL was bombing hospitals. The Red Cross as a matter of standard practice provided field hospital coordinates to the GOSL to avoid accidental fire on the wounded; it had been necessary to ask them to stop doing so, as the hospitals were being targeted soon after the coordinates had been provided.
21. The doctors were taken into custody, held by the CID for several months, and then paraded on television, recanting what they had stated previously. While detained, they had been threatened with long-term detention under the PTA (18 months without trial or charge); they were told that they would be tried and spend years in jail. That was his understanding of the GOSL’s “rehabilitation” process. He was not aware of anyone claiming to have suffered any physical harm during rehabilitation. The Tamil community was aware that people were being forced to recant and it was not taken seriously.
22. The white van disappearances appeared to be state sponsored. In the Northern Province, soldiers were involved, although the vans did not contain state operatives. There was a subculture of paramilitary former Tigers who were now working for the government, as well as pro-government militias. Those who were abducted in white vans often turned up in police custody in due course. When asked about their whereabouts, the police could not find them. When he heard of Tamils returning voluntarily, he was always surprised; he was aware of one such person who was seized on return, taken into custody and tortured. Where Tamils were returned involuntarily, his opinion was that the GOSL would assume that they did not wish to return because they were Tiger supporters in the Northern Province during the civil war, and a witness therefore to what went on. Such people would be intimidated into silence, or worse. The authorities assumed that those who did not wish to return had some kind of connection with the LTTE; the default assumption was that all Tamils supported the Tigers.
23. The funding of the civil war had been unequal; the Tigers were self-funding via their international diaspora and by commercial activities. The GOSL was supported financially by China, Iran, Israel, and Pakistan: it sent military commanders to India, Britain and Canada as diplomats, so that it should be assumed that in those countries, the High Commissions would make Colombo aware of local activities.
24. The Sri Lankan government was sinking ever more deeply into a really dangerous place, a paranoid culture of ultra-nationalism. The country was military-run and regarded itself as under siege, despite the defeat of the Tigers. The GOSL believed that at any

moment the Tamils might revive the internal armed conflict and considered that even economic migrants overseas were likely to be sympathetic to supporters of the armed struggle. Returning economic migrants would have to deal with the security forces, the army and the military generally, all of whom would regard almost every returning Tamil with the deepest suspicion.

25. The levels of discrimination now being imposed were extraordinary. The Tamil community overall was regarded as a threat needing to be marginalised, so that the civil war could never happen again, and anyone with the mildest pro-Tamil opinion was a threat to the Sri Lankan government. He was 'not particularly aware' of the GOSL inviting the return of the Tamil diaspora to help rebuild the Northern Province.
26. Mr Macrae was asked some questions about the LLRC but he had not read it in detail, or not recently. His understanding was that the LLRC had recommended that Tamil rights be guaranteed, that they be permitted to celebrate their religion and culture, that they be granted additional religious freedoms, that the military be removed from civil administration, and that there was deep concern expressed about the cavalier treatment of Tamils by the GOSL and the level of disappearances. Had the LLRC been properly implemented, it should have led to significant improvements in the treatment of Tamils. He was sure some of the recommendations were being implemented; it was not a matter he was giving much time to since he was still in the process of making his next film.
27. Mr Macrae was asked about the arrests of students in Jaffna in November 2012: his understanding was that they were celebrating the dead on 27 November 2012 during Martyrs' Day, an LTTE cultural event of high significance. There had been very few public demonstrations by Tamils since the end of the civil war and this one had been organised in the light of the LLRC recommendation that Tamils should be permitted to celebrate openly their cultural events. The students were arrested, charged, and sent for rehabilitation. He did not know about it personally but he had read of the students' arrest. He understood that they were being held on unspecified terrorism charges under the PTA.
28. In re-examination, Mr Macrae was asked what the political implications would be of asserting Tamil identity in Sri Lanka. He replied that it was perceived as declaring a belief in the Tamil nation or a demand for more autonomy, and as such, a threat to the Sri Lankan state. At the very least, you would be regarded as being in favour of regional autonomy. Sri Lanka at present was an extraordinarily difficult and fearful society.
29. For the second appellant, Mr Spurling asked questions based on the facts of his case. The second appellant had surrendered to the Sri Lankan army, been taken to a camp, and arrested after two days. Mr Macrae's opinion on those facts was that the authorities would consider the second appellant to be a Tiger; and that on the facts found in his case, he would suffer almost certain torture and imprisonment. His life would be in danger. He did not consider that was overstating the situation. He referred to very disturbing footage of a group of girls being taken away by the CID, in obvious fear, which was distressing to watch. Many Tigers who surrendered had not been seen since they were taken away; their whereabouts were not known. He was unaware how the second appellant had managed to get away but he was aware of a number of stories of release in return for money. Sri Lanka was a very corrupt society.
30. In answer to questions from the Tribunal, Mr Macrae explained that the films he made had originated from some footage which Channel 4 News obtained of the execution of Tamil prisoners, in 2010. Channel 4 had been reporting from the camps and from the civil

war. They had been quite critical of the conditions in the UN IDP camps, which were fenced in and guarded by armed guards. The footage, taken just before or after the end of the conflict in 2009, had been sent to the UN, who considered it likely to be genuine. Channel 4 had it independently assessed and were told that there was no manipulation of the images.

31. Mr Macrae had worked on the first film from receipt of those images until July 2011, when it was shown. He had started work almost immediately on the second film, which he worked on from the autumn of 2011 until February 2012, when it was transmitted. He was now at work on the third instalment, using some material from the earlier two films. The 2013 episode would be 90 minutes long and was intended as a film of record. He had read the LLRC in full while preparing the 2012 film but had not looked at it subsequently. The areas he remembered in its recommendations were those which were relevant to his work, and he had filtered them some time ago in putting together the 2012 episode of the "Sri Lanka's Killing Fields" series. He had prepared his statement personally.
32. There was no additional cross-examination or re-examination arising out of the Tribunal's questions.

APPENDIX I

PROFESSOR ANTHONY GOOD

1. We have been provided with two written reports from Professor Anthony Good, Professor Emeritus in Social Anthropology at the University of Edinburgh, where he was the Head of the School of Social and Political Studies until retiring in July 2009. He is currently working with Dr Robert Gibb, of Glasgow University, on a project funded by the Arts & Humanities Research Council entitled 'the Conversion of Asylum Applicants'.
2. His reports, dated 27 January 2013 and 5 February 2013 respectively, cover a general range of issues including the Prevention of Terrorism Act ('PTA') and Emergency Regulations ('ER'), the incidence of torture, release through bribery, continuing interest after release, the consequence of not being screened, the role of paramilitary groups, the general situation in Tamil majority areas, Tamils in Colombo, continuing level of interest of those with actual or perceived LTTE links, participation in anti-Sri Lanka demonstrations overseas, the background political and human rights situation in Sri Lanka, risk at the international airport and the *LP* risk factors.
3. Professor Good was a founder member of Centre for South Asian Studies. He holds Doctorates in Chemistry and Social Anthropology. He lived in Sri Lanka between 1970 - 72 where he was a senior lecturer in Physical Chemistry at the University of Ceylon. He made fact-finding visits to Sri Lanka in August 2003 and February 2006 and paid a further visit to Colombo in February 2010 to interview chief executives of three internationally recognised human rights NGOs. Since his retirement he has continued to teach, write and research into South Asian society, history and culture, with special reference to Tamils. He states that several PhD students and one other Professor of Social Anthropology at Edinburgh University are actively conducting research on Sri Lanka and he exchanges information on a regular basis with them. He was awarded the Lucy Mair medal in 2010 by the Royal Anthropological Institute as recognition of his work in the international development and asylum fields. He has now written over 400 expert reports for asylum appeals, mostly involving Sri Lankans and gave evidence in the four most recent Sri Lanka Country Guidance appeals.
4. Professor Good's reports are prepared on behalf of the third appellant but are of general relevance. In his first report, he quoted at length from source documents on which he relied. The key points we draw from his report are as follows:
 - (a) The present government of Sri Lanka is dominated by the Rajapaksa family. Three of the Rajapaksa brothers hold between them the presidency of Sri Lanka and five government ministries, including the Ministry of Defence and Urban Development. A fourth brother is currently Speaker of the Sri Lankan parliament;
 - (b) Both the authorities and the pro-LTTE Tamils circulate much misleading and even false information, both within Sri Lanka and abroad;
 - (c) The Prevention of Terrorism Act (PTA) and Emergency Regulations required periodic Parliamentary renewal. The Emergency Regulations lapsed on 31 August 2011 and were not renewed, but the principal provisions thereof were then incorporated, and in some cases made more stringent, in the PTA, which remains in force. The PTA permits arrest without warrant for a broad range of offences, and permits detention without charge or judicial supervision (production before a court) for up to 18

months, as opposed to the 90 days provided in the Emergency Regulations before they lapsed. The PTA permits the admission of confessions made without a magistrate present, with the burden of proving a confession was obtained coercively being on a defendant, thus facilitating the use of torture against those detained under the PTA. Acts carried out in 'good faith' under the PTA are immune from Judicial Review;

- (d) Over the entire period of the ethnic conflict, and thereafter, there has been consistent and overwhelming evidence of the routine use of torture by the security forces, paramilitary groups and the LTTE. Such practices are deeply engrained in routine police behaviour. There continue to be reports of torture of Tamil detainees even in formal prisons and there is no evidence that the incidence of torture has decreased since the end of the conflict;
- (e) Many LTTE suspects who were released were unable to return home and/or were under regular security surveillance;
- (f) According to Sri Lanka Department of Prisons statistics, there were between 200 and 300 prison escapes per year in the period 2002-2011. There are no comparable statistics for informal detentions. Informal detentions tend to be in less secure facilities than formal detentions;
- (g) Corruption and bribery are widespread in Sri Lanka, and includes those at the top of the political system and the police. Release through payment of a bribe is 'extremely common';
- (h) The release of a detainee does not of itself indicate that the authorities have no continuing interest in that person. Release without charge or without the payment of a bribe does not preclude subsequent detention. There is evidence of re-arrest and abduction of former LTTE cadres on the East Coast and in the Northern Province in 2011 and 2012;
- (i) It is easy to obtain a false passport or a genuine passport in a false name in Sri Lanka;
- (j) There has been a computerised database of both ordinary criminal and LTTE suspects available since at least 1999. There has, since then, been a cumulative process of refining the IT systems and information sources. The evidence strongly suggests that the backgrounds of returning asylum seekers who have previously been in detention or appear on wanted lists are likely to be known to the authorities. It is reasonable to conclude that where events that took place long ago are less likely to be recorded on central databases and events that took place in Colombo are more likely to have been recorded;
- (k) The details contained in such records would not routinely be known to all relevant personnel at the airport. Immigration officials have access to information from CID and SIS databases.
- (l) The use of "watch" and "stop" lists continue at Colombo airport but whilst immigration officers know when a person is on an alert list they do not have access to the databases and do not know the reasons why a person is on such list;
- (m) There are also CID and SIS personnel at the airport;

- (n) Details of returnees, even if not returned on a charter flight, would be communicated to the Sri Lankan authorities in advance by the Sri Lankan High Commission;
- (o) Virtually the entire population of Vanni were interned after the end of the civil war in a screening process seeking to identify LTTE cadres;
- (p) Those who have been through the rehabilitation process are issued with a Release Certificate valid for 6 months which specifies an address at which they are to reside. These persons must also register with the military's Civil Affairs Office;
- (q) All those returning, including IDPs, must register with the local Grama Niladhari;
- (r) Whilst there have been improvements in the Northern Province in terms of construction and restoration of basic infrastructure, there is now a high level of militarisation in Tamil areas. The Northern Province is dominated by army presence. Legitimate political activity is restricted in Jaffna and said to be non-existent in Vanni. The army are engaging in commercial activity to the detriment of Tamil farmers and trader;
- (s) There has been an upsurge of arrests and abductions of persons with suspected LTTE links in Jaffna in recent months;
- (t) The number of checkpoints in Colombo continues to decline. Abductions in Colombo have continued. Wealthier Tamils such as established businessmen face risks of abduction and kidnapping for ransom. An 'incomer' to Colombo may lack the social networks necessary to obtain employment easily;
- (u) The LTTE has lost the capacity to undertake conventional military conflict. It cannot be said that the level of interest in LTTE suspects on the part of the authorities has significantly decreased. The Sri Lankan government is explicitly continuing its energetic tracking down of persons suspected of LTTE involvement. Many of those that have been through the screening and rehabilitation process remain under intensive surveillance. There is no evidence to suggest that the mere passage of time is a factor in reducing the level of interest in those suspected of LTTE involvement;
- (v) It is extremely likely that the Sri Lankan authorities actively monitor protests by Tamils in London. It is likely that anyone known to have participated in such demonstrations will be a focus of suspicion by the Sri Lankan authorities. The Sri Lankan government explicitly threatened to arrest those participating in the demonstration in the United Kingdom in 2010 against President Rajapaksa's visit to London, should they return to Sri Lanka. Hundreds of photographs of demonstrations in London are in the public domain;
- (w) There is a general climate of intimidation and repression of the media and civil society organisations. It is common for journalists to receive death threats and a number of prominent journalists have been killed
- (x) The risk factors in *LP* are all still applicable. Two additional risk factors may now be relevant; (a) Those involved in demonstration against the Government of Sri Lanka whilst overseas and (b) Those involved in independent media or human rights activities critical of the Government of Sri Lanka.

- (y) In general, the third appellant's account is entirely consistent with the chronology of the ethnic conflict, and with what is known about in-country conditions during and after the conflict, including but not confined to the conduct of the LTTE and security forces. Nothing in his account appears inherently implausible or inconsistent with that country of origin evidence;
 - (z) If the third appellant were detained by the authorities at the airport, or thereafter, it is highly likely he would suffer ill treatment possibly amounting to torture, even if his detention were official.
5. In answer to written questions asked on behalf of the respondent, Professor Good stated as follows: A number of the questions dealt with matters where Professor Good felt that he had insufficient knowledge to give an expert opinion.
- (a) In general the Sri Lankan authorities would be suspicious of persons from cities with substantial Tamil populations. Other than London, this includes Toronto, Oslo and Paris;
 - (b) There is likely to be a risk from the authorities at the airport in Colombo for those forced returnees who have previously been suspected of LTTE involvement or who display others of the risk factors enumerated in *LP*. To the extent that there is monitoring or observation by the Embassy or High Commission of the departing country this is likely to reduce the risk of gratuitous detention and ill-treatment at the airport;
6. In his Supplementary Report of the 5 February 2013 Professor Good added the following:
- (a) For 'normal' flights the Sri Lankan authorities have a standard passenger manifest supplied by the airline.
 - (b) A citizen of Sri Lanka is required to complete a disembarkation card on arrival at Colombo airport. The information required includes the person's onward address within Sri Lanka. This document is not computerised.
7. Professor Good also gave lengthy and detailed oral testimony to the tribunal, adopting both his reports as evidence in chief. In cross-examination, he confirmed that there were newspapers and Sri Lankan journalists in the Northern Province of Sri Lanka, but that there are restrictions placed on what they could report. They are also excluded from designated high security areas.
8. He gave two examples of disinformation circulated by the Sri Lankan authorities; the first being that for a significant period the Sri Lankan government denied there were any civilian casualties during the end of the civil war, despite there being overwhelming evidence to the contrary, and the second being that he had seen reports referring to recent pro-LTTE activity which in fact related to events that had occurred a year earlier.
9. Asked whether he considered that there had been systematic large-scale torture of Tamils detained in camps at the end of the civil war, Professor Good said that the information in this regard was patchy. He speculated that in many cases people were not tortured.
10. Professor Good was taken to a passage from an International Commission of Jurists (ICJ) report of November 2011, cited at paragraph 29 of his first report and asked why the undertaking of medical examination for those detained under the PTA would have as its

purpose the protection of the authorities from future torture petitions. In response Professor Good indicated that the Supreme Court had found in favour of torture victims, although he was unable to assist the tribunal as to whether those judgements had been implemented.

11. Professor Good further explained that detention under the PTA had become more formal since the end of the civil war, although he was unsure as to the current formal procedure. He accepted that he had no idea as to the number of new PTA cases that had been registered, explaining that it was difficult to obtain statistics about the operation of legal process in Sri Lanka.
12. Mr Hall put to Professor Good that his conclusion found at paragraph 40 of his first report, that the third appellant would be detained by the authorities at the airport upon return, could not be correct; inviting Professor Good to identify what facility there was available at Colombo airport for detaining persons. Professor Good's accepted that he was unsure whether a person could be held in detention at the airport, and acknowledged that he could not recall any cases of persons being held at the airport for a significant period. He emphasised however that a person would be taken to the CID and SIS offices at the airport, and that the SIS computer system is accessible there.
13. In relation to the third appellant, Professor Good accepted that there was no evidence that there is a court order or arrest warrant against him, or that he had jumped bail or escaped from detention. He observed, however, that it was not impossible that a record of the third appellant's original detention would be contained on the SIS's database. It is more likely that the Sri Lankan authorities would have connected the third appellant to his brother. In addition, information about the third appellant would have been provided to the Sri Lankan authorities by the Sri Lankan High Commission. He is unable to say whether the Sri Lankan authorities would have put the appellant on a watch list. Professor Good then observed that a great majority of people detained for interrogation were ill-treated. Professor Good continued by confirming that approximately 300,000 people had been questioned and screened and that although there was little information available regarding this process, he understands, from reading a report issued in September 2011 by the French OFPRA entitled *Rapport de mission en Republique democratic et socialist de Sri Lanka* [cited at paragraph 113 of Professor Good's first report], that detainees were classified into categories A to E, category A being high ranking LTTE figures and E being those with a short lived LTTE connection. Professor Good accepted that he had no insight into the rehabilitation process over and above the reports he had cited in his written evidence. Mr Hall asked Professor Good what size the prison population in Sri Lanka is. Professor Good confirmed that he had no knowledge of this fact.
14. Questions then turned to the issue of bribery; Professor Good commented that it was difficult to study bribery. He confirmed that the Bribery Commission in Sri Lanka had been reconstituted in May 2011. He could not say who appointed the Commission's members, or whether it was independent of the Sri Lankan authorities. Dealing with the incidence of bribery, he stated that officials at all levels were not permitted to take bribes, but in practice, the payment of very small bribes to state employees was ubiquitous in Sri Lanka, and higher officials also took bribes, in larger amounts due to their status and greater influence. Where a person complained about being asked for or paying a bribe, the matter was normally dealt with internally, though occasionally such complaints went as far as Court proceedings.

15. Asked in cross-examination about evidence of immigration officials being bribed not to scan a passport during an individual's exit from Sri Lanka at Bandaranaike Airport in Colombo, Professor Good explained that he had written expert reports for a large number of appellants who had stated that this had occurred. He had no direct knowledge whether it did, but assumed that what happened was that the agent might tell his client to approach a particular immigration official at the airport with whom the agent had a financial arrangement. Some people might just exit Sri Lanka on false passport or on a genuine passport in a false name.
16. Asked whether, were a bribe was paid to secure release from custody that would include the provision of a release form indicating that the person was of no further interest to the Sri Lankan authorities, Professor Good considered that to be possible. He personally had never seen a release form, save the specimen form exhibited to the Norwegian COI (*Landinfo*) report on the release of rehabilitees.
17. Asked whether an individual, who had been detained before the end of the civil war and then apparently successfully 'rehabilitated', would be of less interest to the Sri Lankan authorities after his release, Professor Good referred to the Norwegian *Landinfo* report; much would depend on the individual military commanders in the area where the individual lived after his rehabilitation. Rehabilitees were required to register with, and report to the civil and military authorities in their home area after rehabilitation. Some military commanders took a much more intrusive approach, requiring more regular reporting. A rehabilitee was required to notify the authorities if they wished to travel outside the area where they were living.
18. In his first report, Professor Good had stated that those who had been through the rehabilitation process remained under 'intensive surveillance' as set out at paragraphs 98, 114 and 153 of that report. In cross-examination, he was asked to comment further, and he stated that the 'surveillance' consisted in most cases of regular reporting to the military authorities in the home area, but that also, intelligence operations had been strengthened in the Northern Province, with many informers operating within local populations. Rehabilitees were given IOM cards and in some circumstances were eligible for benefits from the IOM. The IOM kept track of rehabilitees and maintained records concerning them. The police had tried to introduce a process of registration in Colombo in 2011 but discontinued it after vigorous community protests.
19. Dealing then with the question of abduction of former LTTE members, Professor Good said that such abductions occurred for a variety of motives. There was evidence of abduction of individuals by unknown persons in white vans, some of whom ended up in the custody of the security forces. He had given some recent examples in his first report: around 45 former LTTE cadres and their family members had been picked up in one week in December 2012, according to records of complaints kept by the Sri Lankan Human Rights Commission, but that was a low figure since according to TamilNet, the occupying military forces had sternly warned family members in the Northern Province not to complain to the Commission. Those who were taken to military camps were fingerprinted and asked about their current social and political connections, as well as those of their friends and relatives. His evidence on this point was derived from a number of articles on the website TamilNet. Professor Good was unable to add any more information on this point.
20. Questions then turned to the relevance of activities by Sri Lankan nationals in the diaspora. Toronto had the largest Sri Lankan Tamil diaspora. When asked whether he considered that there was a greater risk for those returning from London or Toronto, Professor Good

stated that risk depended on an individual's circumstances, rather than his country of refuge. The Sri Lankan authorities had additional concerns about those returned from London, where the Tamil diaspora was particularly active. The GOSL's attitude had hardened after the humiliation President Rajapaksa suffered in June 2012 during his visit to the United Kingdom for the Queen's Golden Jubilee celebrations. He was forced by demonstrators to travel incognito to Marlborough House in London rather than using his own limousine, and his invitation to speak at the Oxford Union was withdrawn as he was considered to pose a public order risk.

21. Professor Good confirmed that the GOSL was concerned that the Tamil diaspora continued to raise funds for the LTTE and to try to revive the conflict in Sri Lanka. Professor Good stated that there was evidence of fundraising but that he did not know the purpose of the fundraising, nor was he aware of any communication networks between the Sri Lankan Tamils and the Tamil diaspora with a view to LTTE resurgence in Sri Lanka. There was a Tamil government in exile [31]. He considered it obvious that the GOSL did not regard all returnees from abroad as a terrorist threat.
22. Professor Good could neither confirm nor rebut the suggestion that the UNHCR had no presence now in the Northern Province of Sri Lanka.
23. In re-examination, Professor Good observed that the LTTE had no fighting capacity by the end of 2009 and that the Sri Lankan armed forces have tripled in size since the end of the civil war and that there is a need for the Sri Lankan authorities to justify this increase. He could not say whether there existed in the rehabilitation camps any judicial process for establishing who was a member of the LTTE but in his opinion, absent any evidence that such a judicial process existed, it was likely that there was none.

³¹ The Transnational Government of Tamil Eelam (TGTE), elected in 2012 by the Tamil diaspora internationally, including Canada, the United Kingdom, Norway and the United States. The TGTE's Prime Minister is Visvanathan Rudrakumaran, the former international legal advisor to the LTTE, now a US citizen living in New York.

APPENDIX J

DR CHRIS SMITH

1. Dr Chris Smith is an Associate Fellow of the Royal Institute for International Affairs, Chatham House, London; a Visiting Fellow at the Institute of Commonwealth Studies, London and a Visiting Fellow in the Department of Politics at the University of Bristol. In 2012 he was appointed as a Senior Security Sector Advisor to the United Nations in Iraq and the Iraqi National Security Council. He is also a freelance researcher and has established his own consultancy company.
2. Until January 2005 he was the Deputy Director at the International Policy Institute, King's College, and London where he worked predominantly on security issues in South Asia over the past two decades. He had delivered many academic papers and lectures on Sri Lanka and in particular on the security sector there. Between 1992 and 2005 Dr Smith advised policy makers on Sri Lanka, including the Foreign and Commonwealth Office, The British High Commission in Sri Lanka, the Ministry of Defence and the Department for International Development. In 2002 Dr Smith was a technical advisor to the Government of Sri Lanka's Defence Review Committee. He gave evidence in the country guidance cases of *LP*, *AN & SS* and *TK*. He has visited Sri Lanka on five occasions since the decision in *TK* [October 2009], for a month or more on each occasion. He last visited Sri Lanka in November and December 2012 in preparation for his evidence in the instant cases.
3. Dr Smith has provided us with four written reports; two upon the request of the third appellant, dated 24 January 2013 and 28 January 2013, one at the request of the second appellant dated 30 January 2013 and one at the request of the first appellant dated 13 August 2012. These reports cumulatively total 155 pages. Although these reports deal specifically with the circumstances of the appellants that requested their production, each primarily deals with the general circumstances in Sri Lanka.

General observations in the four reports

4. Dr Smith provides the following general information in his reports concerning the three appellants. We deal later with his observations on each individual appellant's account.
5. The civil war ended in 2007 in the Eastern Province, but continued in the Northern Province of the country until May 2009. Tamil civilians were encouraged to relocate east to no fire zones for safety. In the aftermath of the civil war, some 300,000 IDPs were transferred to camps in the Vavuniya district. Records of IDPs were drawn up, not least to allow the authorities to issue ration books. IDPs were also screened to assess possible links to the LTTE and encouraged to self-identify, however short their service with the LTTE.
6. In the aftermath of the end of the civil war thousands of IDPs were kept in makeshift camps, with access to, and for, the outside world being severely limited. It is thought that the screening process for LTTE supporters was extremely rigorous and there have been reports that this process involved torture. An estimated 12000 people with even the most tenuous links to the LTTE were detained after having been through the screening process. The family members of those detained were not informed of the detention. The

Sri Lankan government denies both that the level of civilian death had been significant and that sexual violence had taken place in the camps. The camps were dismantled in 2012 as a result largely of pressure from the international community. There have been no terrorist incidents since May 2009.

7. There is unequivocal and universal relief in Sri Lanka, including of the Tamil population of Vanni, that the civil war has ended. The Sri Lankan security services are seeking to identify whether or not there is a threat that LTTE remnants might combine to provide a national security threat. The authorities continue to have an adverse interest in even low-level cadres who had been conscripted into the LTTE. There is evidence that former LTTE cadres who have been rehabilitated are being rearrested. The authorities are likely to detain anyone they think might be an LTTE cadre. Both the EPDP (in the Northern Province) and TMVP (in the Eastern Province) joined the Sri Lankan authorities in common cause against the LTTE. Both groups continue to bear arms and indulge in criminal activity and acts of violence.
8. During 2012, the Sri Lankan authorities began search operations in the Eastern Province, in the belief that LTTE cadres had returned to the country. The Army is conducting a massive intelligence operation across Vanni with every village having an informant (known as a catcher). New arrivals in any particular area are scrutinised by the catcher. The fact that a person from Vanni had missed out on the 'screening' process would not of itself entail any particular consequences.
9. The principal mechanism through which people are likely to be tracked down is through the Watch list, which forms part of an electronic database that alerts the authorities to the return of someone who is of adverse interest and is used to trigger covert surveillance.
10. The electronic records held by the Sri Lankan authorities include records of individuals who are of adverse interest to them. The centralised collection of records began in the mid 1990s. Once details of a detainee have been entered on the database they remain there for life. If an entry includes mention of an arrest warrant the individual will be put on a Stop list. The database is available to the authorities at the airport and in some police stations including CID headquarters in Colombo. Although not currently the case, all police stations are shortly to be linked electronically into one network. The electronic database has recently been linked to the emigration system.
11. Every detention of a suspect by the security forces (including the police) resulted in a record being raised and where possible, these records would be sent to the next of kin, the Grama Sevaka and the Head of Divisional headquarters. Records were drawn up for all LTTE suspects and lodged with the Ministry of Rehabilitation, the SIS and Military Intelligence. These records were transferred to the centralised database.
12. Legal employment cannot be obtained without an identity card, and it is generally necessary to hold an ID card in Colombo to obtain rental accommodation, and access to medical care. It can take up to a year and a half to obtain an ID card, and this process is particularly difficult for those who do not have a birth certificate, passport or serial number from a previous ID card. 'This will require a trip back to the district of origin to request the Grama Sevaka to certify identity'. There is a commitment in Colombo that an ID card replacement will take place within 24 hours, but this will require all the necessary documents to be submitted. It is estimated that in excess of 100,000 Tamils were without an ID card at the end of the civil war. In July 2010, the police began to

register all Tamils in Wellawatte, a Tamil district of Colombo. It has been reported that this was discontinued because of community protests.

13. Anyone with even the most tenuous links to the LTTE in the Northern and Eastern Province at the end of the civil war in 2009 would have been screened extremely closely and records drawn up. These records would eventually have been included on a central database in Colombo. If a bribe was used to short circuit the screening process, the person will have been recorded as an unacquitted suspect. If someone of adverse interest is released upon payment of a bribe, those who accepted the bribe will be responsible for ensuring there is a record of why the suspect was released; a note indicating that a person was released because they were a person of no further interest, being one option. If the person who accepted the bribe could not acquire access to the records, it is more likely that they would report the 'release' as an escape which would lead to an arrest warrant being issued. Someone who is recorded as escaped or missing would be of significant adverse interest to the authorities.
14. Not all Sri Lankans who claim asylum in foreign countries, including the United Kingdom, are of adverse interest to the Sri Lankan authorities. Staff at the Sri Lankan High Commission in London pass details of all removals to the security forces in Colombo and all incoming flights to Colombo are required to fax the passenger manifest in advance.
15. All returned failed asylum seekers are questioned at Colombo airport. The incidents of detention at the airport have increased since *TK*, despite the civil war having ended. Initially officers from the DIE interview all returnees. Once satisfied that a person is of Sri Lankan origin, returnees are referred to the CID and SIS. Each part of the Sri Lankan security apparatus has its own intelligence section and the respective sections do not communicate with each other.
16. According to the Sri Lankan government, 'asylum seekers are hard core LTTE members', but there is evidence to indicate that the Sri Lankan authorities know that some Sri Lankans leave their country because they are economic migrants rather than terrorists.
17. There is an electronic database available at the airport in Sri Lanka. If an entry on the electronic database mentions an arrest warrant, the person to whom it relates is placed on a "stop" list and is detained immediately on return. If a person is on the Watch list on the electronic database they will be allowed to proceed but the authorities will be notified. The Stop and Watch lists form the core of the electronic database.
18. Direct and instant access to the electronic database is probably confined to the airport and intelligence headquarters. The SIS is often notified about planned enforced returns from the UK by the Sri Lankan High Commission in London. The electronic database is not widely available elsewhere in Sri Lanka and is not available at the largest checkpoint in Sri Lanka, at Omanthai. Police stations are not electronically networked and most do not even have computers.
19. The CID do not have unlimited access to the SIS electronic database. They can access the database on a case by case basis. The CID has a 24 hour presence at Colombo airport. There are 2 main lists at the airport to alert the authorities of someone of adverse interests; the "watch" list and the "stop" list. Those on the Watch list will likely be placed under surveillance, especially on return to their homes. They may be asked to report and may receive visits from the authorities. The airport remains a major area of vulnerability for returning asylum seekers but in some cases risk continues after the airport;

20. UNHCR data for 2011 indicated that 75% of refugee returns under the voluntary repatriation scheme were contacted in their homes by either the military or the police for further registration. 26% of returnees were visited on more than one occasion. Every returning person to the Vanni must register their presence with the authorities.
21. Scarring remains an issue for returned asylum seekers, and has long been considered in Sri Lanka to be a significant indicator as to whether a Tamil might have been involved in the LTTE. When people are detained for other reasons they are stripped to their underwear during interrogation. Scarring is not a significant issue on its own, but is important in its contribution to “rousing suspicion”.
22. As of January 2013, the Sri Lankan government admitted that 26,000 persons from the camps have been unable to return to their homes in government restricted areas. The majority (75%) of the Sri Lankan Army’s divisions are now stationed in the Northern Province; possibly amounting to 180,000 personnel. There is on-going construction of new cantonments. The army runs small businesses in Vanni and has opened one hotel and is building another. The behaviour of the military as an occupying force is driven by individual commanders.
23. In December 2009, the EU adopted a proposal to suspend a trading concession scheme to Sri Lanka, based primarily on Sri Lanka’s human rights record. In 2010, the UN Special Rapporteur called for an enquiry into possible war crimes in Sri Lanka. The government’s response to war crimes allegation was to set up the Lessons Learnt and Reconciliation Committee (LLRC). The December 2011 LLRC concluded that the Sri Lankan military gave the highest priority to protecting civilians, but accepted that civilian casualties were caused by government shelling during the civil war. The government has a National Action Plan to co-ordinate implementation of the LLRC’s findings.
24. There are only limited ways in which the Sri Lankan authorities can identify an individual who has provided evidence on war crimes. One such way would be if an individual is on record as having given evidence to the LLRC.
25. The incidence of torture had not decreased since the end of the civil war or since *TK* was decided. Although the Emergency Regulations (ERs) were lifted in 2011 the Prevention of Terrorism Act (PTA) was amended at the same time, to incorporate matters formerly included with the ERs. The security forces continue to operate in a culture of impunity which neither the President nor the Secretary of Defence have done anything to address.
26. In recent years, physical attacks on journalists have become commonplace, most of which are thought to be ordered by senior politicians against those who criticise how the conflict had been handled by the state. The best-known example was the murder of Lasantha Wickremetunge, the late Editor of the Sunday Leader and former friend of the President, who researched and published stories of abuse of power by the President and his family.
27. There is a trend towards monitoring and blocking websites, and targeting those responsible for websites, that post information and comment considered disadvantageous to the government. Phone tapping has been a fact of life in Sri Lanka for many years. The Sri Lankan government admitted, in 2012, that it was tapping 687 personal phones, including those of politicians, religious leaders, newspaper editors and journalists.

28. Abductions in Jaffna and Colombo are on the increase. In the 9 months to August 2012 58 disappearances occurred. It takes a year or more to acquire a replacement of new ID card, each case being investigated by the police. A new ID card is obtained from a Grama Sevaka in an individual's place of origin. In order to obtain a new card a person must travel to their place of origin. In the Vanni, where there was an intensive security operation in 2012 using the "watch" list to identify whom to monitor, anyone travelling within the area and failing to produce an ID card at a checkpoint was detained;
29. The SLHC in London monitors anti-government demonstrations carefully. SLHC staff take photographs of protestors. It is not known what happens to the photographs but it is reasonable to assume that they are sent to the relevant intelligence section of the State Intelligence Service (SIS). Research on human face detection and research is underway within the Department of Statistics and Computer Science at the University of Colombo, Sri Lanka and there appears to be joint working with the Ministry of Defence to develop face recognition technology.
30. Dr Smith considered that the 12 "risk factors" identified in *LP* remain valid. In his opinion, four additional risk factors should be added:
 - (a) the lack of an ID card, entailing a need to return to the home area, travelling through checkpoints, to obtain a replacement, which was likely to lead to detention;
 - (b) the presence of an LTTE inspired tattoo on a person,
 - (c) identification as having protested against the Sri Lankan government whilst outside Sri Lanka; and
 - (d) having a mental health issue, those with mental health issues being heavily stigmatised in Sri Lanka.
31. Dr Smith also broadly endorsed the risk categories in the UNHCR guidelines, although he considered that some of them would require more research, particularly the final category which referred to LGBTI individuals.
32. Corruption is widespread in Sri Lanka and has increased dramatically in recent years. The Commission to Investigate Allegations of Bribery of Corruption received over 3000 complaints in 2012. The Rajapaksa family control between 40% and 70% of all state spending and are widely thought to take monies in relation to most major business contracts coming into Sri Lanka. The President now controls the Attorney General's Office. All NGO programme and project funds must now be held in Sri Lanka and the government has power to confiscate funds from NGOs who fall foul of the state.
33. The judiciary and police have been wholly ineffective in combating corruption, and corruption is 'rampant' in the Sri Lankan police. The Sri Lankan Supreme Court has made several decisions against police officers for abuse of power but no action was taken against them.
34. Bribery is sufficiently prevalent in Sri Lanka to overcome considerations of national security. There is evidence that even senior, known, LTTE officials have been able to secure their release from detention through payment of a bribe. A person of interest can exit Sri Lanka though the airport using bribery. People trafficking agents are still very active at the airport and at least one Member of Parliament is involved in organising irregular emigration. Dr Smith's understanding was that, for money, the MP would provide details of an appropriate immigration official to approach at the airport. There is a practice whereby an emigration officer will close down his computer to avoid

connecting an individual's passport to the system, alternatively the passport is not swiped but is stamped, therefore the database is not alerted.

35. In Colombo, Tamils who are well integrated and have no connections with the LTTE can largely live as other ethnic groups do in Colombo. When stopped in Colombo a Tamil with an ID card from elsewhere will attract greater attention, possibly adverse. If those from outside Colombo could not provide a valid reason for being there, this would lead to a risk of detention.
36. 11700 LTTE cadres have undergone rehabilitation and reintegration. According to the IOM Sri Lanka, the rehabilitation process involves preparing ex-combatants for a future in employment by providing vocational training. It is not known whether the rehabilitation process contains any form of political re-education;
37. In relation to the second appellant's case in particular:
 - (a) the second appellant's claim that his release was procured through payment of a bribe to a PLOTE member is plausible;
 - (b) It is likely the authorities would have a detailed record outlining the scope and nature of adverse interest in the second appellant;
 - (c) The second appellant will have to return to Point Pedro to obtain a new ID card. His ID card will therefore indicate he is a Tamil from the Jaffna peninsula and not the former war zone. He would have difficulties in making the journey to Point Pedro without an ID card and would in particular be stopped at one of the many checkpoints en route. If he were so stopped he would be detained;
 - (d) The duration of the second appellant's detention coupled with his status as an unacquitted suspect (depending upon whether and how his record was amended after he left detention) may have led to his name being placed on the electronic database, which would cause an arrest warrant to be issued.
38. In relation to the first appellant, Dr Smith considered that:
 - (e) it is plausible that the first appellant was released on payment of a bribe as claimed;
 - (f) it is plausible that the first appellant was ill-treated whilst detained;
 - (g) the first appellant will be questioned at the airport upon return;

Oral evidence

39. Dr Smith adopted his evidence and was tendered for cross-examination. When cross-examined, Dr Smith accepted Mr Hall's observation that after the end of the civil war the SL authorities had amassed a significant amount of intelligence about the LTTE within Sri Lanka and about its overseas networks. He had been unsuccessful in trying to obtain information as to what the rehabilitation process involved.
40. Dr Smith repeated that the Sri Lankan authorities were very concerned about a resurgence of the LTTE and that any resurgence would start overseas. In his opinion, the Sri Lankan authorities would try and prevent certain people leaving Sri Lanka in order not to encourage resurgence. This would be done through the use of the electronic

database, now accessible by both immigration and emigration staff at Colombo airport. He had not seen a copy of an electronic record held on that database but he had discussed its contents with a Sri Lankan intelligence officer, who told him that the information held included reasons for adverse interest, biodata and family data.

41. Dr Smith was then asked questions about the checkpoints en route to Colombo airport. He observed that there was an Air Force checkpoint on the 'spur' road to the airport. Foreigners are let through. He did not know what happened to Sri Lankans but considered that anyone who looked Sri Lankan would be stopped, and asked for their passport, national ID card and ticket. As to the security situation in Colombo generally he explained, although there were still checkpoints in the city, there had been a recent improvement in the atmosphere.
42. As to whether an arrest warrant would be issued against a person released from detention, Dr Smith considered that this would depend on a number of factors, such as where and how they had been arrested. It was more likely that an arrest warrant would be issued for a detention in Colombo than in the Northern Province. Dr Smith opined that where a person had escaped 'through the back window' of a detention facility that person would be treated as an 'unacquitted person' and an arrest warrant would be issued for them.
43. In relation to the phrase 'unacquitted person', Dr Smith was not aware of (a) whether a detained person is considered to be an 'unacquitted person' until they have been formally released, (b) where 'unacquitted persons' are held, (c) whether family members are informed of the place of a person's detention, or (d) whether there is a formal process to end the detention of a person who was detained irregularly. He observed that the use of the term 'irregular' might not be apt in the circumstances of Sri Lanka because what, in the United Kingdom, could be considered to be irregular detention was lawful under the PTA.
44. When asked by Mr Hall whether it would be possible to obtain by bribery a certified release document stating that a person was of no further interest to the authorities, Dr Smith responded by observing that most documents could be obtained by bribery in Sri Lanka. The Police are more corrupt than the army.
45. Asked whether he knew of any reason why in 2013 the Sri Lankan authorities would wish to detain and torture a low level LTTE suspect, Dr Smith relied on his earlier evidence about the Sri Lankan authorities' concerns about LTTE resurgence; the authorities in Sri Lanka are going to extraordinary lengths to prevent resurgence occurring.
46. As to the current situation of the 11,000 LTTE suspects detained at the end of the civil war, Dr Smith observed that although almost all of them had been released, some were required to report regularly, and a few had been re-arrested. He had no information as to why such persons had been re-arrested. His information was that the military occupying Vanni know who had past LTTE connections; there was a highly developed intelligence network in place and the authorities kept track of former LTTE affiliates and sympathisers.
47. Questions then turned to the position of those involved in demonstrations against the Sri Lankan authorities in London, photographs of those attending, and face recognition technology. Dr Smith could not say whether the Sri Lankan authorities had the capability to identify a person from a photograph of them that had been taken at a demonstration in

London. He was unaware of what the Sri Lankan authorities did with such photographs once they had been transmitted from London to Colombo. He was unaware whether the CID now has face recognition technology in their headquarters, but noted that (a) such technology was now quite cheap and (b) the Ministry of Defence is funding a project at the University of Colombo relating to face recognition technology. Dr Smith was sure that there were no cameras at the airport in Colombo.

48. Returning to the electronic database, Dr Smith agreed that if a person was released from detention and no arrest warrant had been issued, the electronic database would not record them as being of adverse interest. He did not accept the proposition put by Mr Hall that if a person had not had an arrest warrant issued against them they would not be recorded as being of adverse interest.
49. Mr Hall invited Dr Smith to comment on the question as to how the authorities in Colombo would know to detain a person who had passed through the airport upon return to Sri Lanka despite there being an arrest warrant outstanding against that person. In response Dr Smith recounted his evidence that the electronic database contains a Stop and a Watch list and that if a person is on the Watch list they would be subject to surveillance after leaving the airport. The Sri Lankan authorities lacked technology so this would likely amount to 'following people'.
50. When asked about persons leaving Sri Lanka and the practice of emigration officers shutting down computers, Dr Smith referred the tribunal to the evidence he had provided on this issue in his written reports. He confirmed his understanding that agents are able to ensure that persons who are on the electronic database are nevertheless able to leave Sri Lanka without problem. Dr Smith was unaware of the cost of a false passport, but was aware that genuine passports can be obtained illicitly and then unreliable details added thereafter. There is no biometric testing in Sri Lanka at present although this 'is coming'.
51. Dr Smith accepted that the Sri Lankan authorities did not believe all asylum seekers were LTTE members: the mere fact that a person is a Tamil failed asylum seeker would not of itself lead to adverse inferences being drawn against that person by the Sri Lankan authorities. He confirmed that such a person would be interviewed at the airport on return, and if the Sri Lankan authorities were satisfied that they were not of adverse interest, they would be allowed to leave.
52. As to whether PLOTE have access to the SIS electronic database, Dr Smith thought not. He confirmed that PLOTE did not operate any camps but they do act as guards in camps run by the Sri Lankan authorities. Dr Smith was unaware as to whether the SIS have 'stations' throughout Sri Lanka, although he thought this unlikely. He was also unaware as to the number of officials in the employ of the SIS.
53. When questioned as to his knowledge of data relating to those who had been mistreated after having returned to Sri Lanka, Dr Smith observed that no human rights organisation or NGO systematically monitors the treatment of returnees, and he knew of no organisation that collates information in Sri Lanka that related to failed asylum seekers. Dr Smith was aware that the UNHCR holds data on those who voluntarily return to Sri Lanka, although he was unaware whether it collected data relating to the mistreatment of such returnees.
54. Dr Smith was unaware of there being any evidence of ill treatment of individuals screened by the Sri Lankan authorities at the end of the civil war, nor of systematic

mistreatment of those who had been released from the camps. He observed, however, that the international community had no access to the camps or the screening process. There was 'a lot of self-censorship' amongst bloggers and journalists in Sri Lanka.

55. Dr Smith's opinion was that the basic principles as to when records are created in Sri Lanka had not changed since the decision in *TK*, reference being made to paragraph 82 of that decision. He stood by the evidence he had given in *TK*, as recorded at paragraph 23 of that decision, although he is now less convinced that there exists a comprehensive exchange of information between the CID and SIS. He understood that paper records are being added to the computerised database in a chronologically backwards order. Police stations in the Northern Province are rudimentary and are not currently computerised, although the plan is to network all police stations.

APPENDIX K

OTHER COUNTRY EVIDENCE

Professor Rohan Gunaratna

1. Dr Rohan Gunaratna is Head of the International Centre for Political Violence and Terrorism Research and Professor of Security Studies at Nanyang Technological University in Singapore. He holds a PhD in International Studies from the University of St Andrews in Scotland and a Master's degree in International Peace Studies from the University of Notre Dame in the United States. He worked previously and the Centre for the Study of Terrorism and Political Violence in the United Kingdom under Professor Paul Wilkinson.
2. He is a specialist on the LTTE. He has interviewed the LTTE leadership including Prabakaran before his death and also several hundred LTTE cadres, including in the United Kingdom. He has written dozens of books on terrorism, has served as a consultant to the law enforcement agencies of the United Kingdom and United States. He helped the GOSL to design, develop, implement and evaluate the rehabilitation programme for LTTE members and is thus particularly well placed to assist us as to how that programme operates. Unfortunately, he has given no details of the programme itself in his statement, but he does assist us as to how it operated in 2009, and in contrast, how it operates today.
3. He was called as a witness in relation to the first appellant. He spoke to the first appellant on the telephone for two hours, comparing the first appellant's account with his own knowledge of the inner workings of the LTTE, which corroborated the appellant's account of his activities as its finance manager and manager of fuel requirements for the LTTE. The finance wing of the LTTE was secret; the appellant had knowledge which was not in the public domain. He considered that the first appellant's account was credible, and that if his sister, who served in Prabakaran's medical team, had died in the final conflict, it was likely that her body might not have been found, as the appellant claimed.
4. At paragraphs 3.16 and following, Professor Gunaratna considered the position relating to the rehabilitation programme. He made the following general points:
 - (i) Those who, like the first appellant, were arrested before the fighting between the government and the LTTE had ended, would not have been automatically placed in the rehabilitation programme;
 - (ii) Immediately after May 2009, all those who surrendered were placed in the rehabilitation programme.
 - (iii) Those who did not wish to surrender went to IDP welfare centres where they masqueraded as civilians. Some were successful in that; others were identified by Tamil civilians, or former LTTE cadres and supporters acting as government informants. They were detained, investigated, and either prosecuted or sent to the rehabilitation programme and later reintegrated. Of a total of 12000 LTTE cadres sent for rehabilitation, 11500 had been through the rehabilitation programme and been reintegrated.
 - (iv) Most of those whose crimes were serious (assassinating government leaders, placing bombs in public places, killing detainees in LTTE prisons, and so on), were charged, and detained, with a view to prosecution.

- (v) Moving on to the situation now, the government's strategy in 2013 was to send to the rehabilitation programme 'anyone the government believes can benefit from [rehabilitation]'. That now included some of those who were still detained awaiting prosecution; there were still a few hundred LTTE cadres in that situation. 'Tamilini', the leader of the LTTE women's wing, had been transferred to the rehabilitation programme in 2012.
 - (vi) In his expert opinion, LTTE cadres deported from foreign countries are held in detention, investigated, and either prosecuted or rehabilitated. The criteria had changed: in 2009, the rehabilitation programme was used for those identified by membership of and degree of involvement in the LTTE; now, it was more nuanced and guided by concerns about the resurgence of the Tigers in the Tamil diaspora. The decision whether to detain would be made after a fact-specific assessment by the police, security and intelligence services.
 - (vii) The GOSL had great trust in the outcome of the rehabilitation programme, believing that most of those who had been rehabilitated would not return to terrorism. Of the 11,500 so far rehabilitated, none had done so, although a dozen had lapsed into ordinary criminal activities. Those who had been through the rehabilitation programme but whom the security forces believed to be in communication with 'LTTE operatives in the diaspora' would be rearrested and detained.
 - (viii) Professor Gunaratna stated that he knew that the reason behind the arrest of 45 LTTE cadres in Jaffna who had already been through the rehabilitation programme was the belief of the security services in Sri Lanka that they were in communication with LTTE operatives abroad.
 - (ix) The Sri Lankan High Commission in London, when issuing travel documents, would interview returnees and ask them about their identity, nationality, and the extent of their past and current involvement with the LTTE. Consular officials in Sri Lanka had told him these were standard questions, but that no formal security screening was possible overseas.
 - (x) Returnees were screened at Colombo airport on return. They were not detained there; the airport had no detention facilities. Government officials at the airport to whom he had spoken indicated that if a returnee was of interest by reason of their past or current association with LTTE front organisations, they would be invited for an interview once they had returned home, rather than at the airport.
5. Attached to Professor Gunaratna's report is an article from Sri Lanka's Defence Ministry website³² reporting a joint briefing he carried out on 3 January 2012 with the Australian High Commissioner for Sri Lanka, Admiral Thisara Samarasinghe, entitled "High Commissioner for Sri Lanka & Professor Rohan Gunaratna briefs Australian Parliamentarians", in which his contribution is recorded thus:

"Professor Gunaratna began proceedings by explaining the magnitude of the terrorist threat that Sri Lanka had to face and the sophistication and brutality of the LTTE which was finally defeated militarily in 2009. He explained the circumstances of the humanitarian rescue operation undertaken by the Sri Lanka Government to rescue 300,000 civilians who were being held hostage as human shields. Speaking of his involvement in developing a programme for the rehabilitation of LTTE ex-combatants, he said that the programme had successfully rehabilitated and reintegrated most of those that surrendered (11,600) save a few hundred who have been heavily involved in terrorist activities against whom judicial action would be taken depending on evidence available.

³² http://www.defence.lk/new.asp?fname=20120301_04

Professor Gunaratna also gave details of fund raising and arms procurement that was done by the LTTE in Australia over the years through front organizations and requested members of parliament not to let front organizations continue to do the same in the future. Although the LTTE has been defeated militarily Professor Gunaratna stated that LTTE supporters overseas continue to agitate to revive the group. On the issue of reconciliation, he said that the Lakshman Kadiragamar Institute of International Relations and Strategic Studies, an institution created in memory of the former Foreign Minister of Sri Lanka of Tamil ethnicity who was assassinated by the LTTE, has held several rounds of discussions with stakeholders to address various aspects of reconciliation. He requested that Australia consider supporting an international conference on reconciliation in Sri Lanka."

6. The remarks of High Commissioner Samarasinghe are set out:

"High Commissioner Samarasinghe in his presentation highlighted Sri Lanka's achievements in the post conflict phase including the resettlement of over 90% of Internally Displaced Persons, rehabilitation of ex-combatants, reduction of HSZs, withdrawal of Emergency Regulations, de-mining, holding of elections in the North and East etc.

He also explained the steps being taken by the Government with regard to reconciliation including the launch of the Trilingual Policy initiative, large infrastructure projects undertaken in the North, the large amount of funds allocated and delivered to develop the North and East and the steps taken to recruit over 600 Tamil speaking police officers to ensure that persons of Tamil ethnicity would be able to obtain assistance in their own language.

The High Commissioner also drew to the attention to those present that the Northern Province was growing at a rate of 22% in comparison to the rest of the country which is growing at a rate of over 8%. He underscored the emphasis placed by the Government of Sri Lanka in ensuring that economic development is delivered to the people of the North and East quickly as they were the ones most affected by the conflict.

The High Commissioner briefed those present on the LLRC report and said that the Government was going ahead with the implementation of these recommendations and would be announcing a roadmap for same soon. He sought the understanding of the international community and friends such as Australia as Sri Lanka moves towards this process. He stated that Sri Lanka should be given adequate time and space to undertake its internal reconciliation process. As a case in point he said that following the LLRC recommendations the Sri Lanka Army and Sri Lanka Navy have established their own inquiries to investigate any wrongdoings by service personnel during the conflict.

The High Commissioner said further that he was deeply concerned about certain elements in the diaspora in Australia who were intent on destroying the processes of reconciliation and economic development taking place in Sri Lanka by continuing a campaign of separatism. He highlighted the involvement of these diaspora members in LTTE and LTTE front activities and said that they have already begun fundraising campaigns for the cause of creating a separate state of Tamil Eelam in Sri Lanka. He added that these front organisations were similar to those set up by the LTTE in the Eighties, through which they raised funds and procured arms and ammunition to unleash terrorism in Sri Lanka. He explained to those present how the LTTE flag was used at the Australia vs Sri Lanka cricket match held in Sydney on 17th of February and said that it was regrettable that an international sporting encounter was used by the pro-LTTE lobby to agitate for their cause. The High Commissioner concluded his presentation with a photograph depicting a recent

marriage which had taken place between a Sri Lankan soldier and a former LTTE combatant. He said that reconciliation was happening in Sri Lanka between the two communities and the pro-LTTE diaspora should not be allowed to derail that process."

Mr Paikiasothy Saravanamuttu

7. Mr Saravanamuttu provided a written report. He is Executive Director, Centre for Policy Alternatives, Colombo, Sri Lanka and a prominent international human rights campaigner based in Colombo with an international reputation. In 2009 he received a death threat and was detained at Colombo airport by the TID. He received Sri Lanka's National Peace Council's first Citizens' Peace Award in 2010, established "to honour and encourage those individuals in civil society who have demonstrated courage and consistency in the protection of and respect for human rights; peaceful settlement of disputes and promoting increased understanding between and among communities". He remains the subject of hostile comment, including a poster campaign in 2013, for his views on human rights, governance and transparency in Sri Lanka.³³
8. Mr Saravanamuttu was asked a range of questions but due to time pressures his report deals only with the political situation in Sri Lanka since the end of the civil war, and the situation in the former LTTE areas. He recorded the egregious human rights violations committed, by both sides, and the disregard for human life or dignity. His report sets out international and national criticism of the militarisation of the Northern Province, the harassment and threats to lawyers and journalists, the tight control over the government in the hands of the Rajapaksa family (a total of 200 members of the family now hold government or civil service jobs, the two-term Presidency restriction has been removed from the constitution and a wide range of posts which required external approval are now in the gift of the President). He set out at some length the events concerning the impeachment of the Chief Justice Dr Shirani Bandaranayake and her replacement with Mohan Peiris, a vigorous public defender of the Rajapaksa government's record internationally.
9. The Menik Farm camp which after the civil war contained 300,000 Tamils had closed in September 2012 but there remained serious problems with housing those who had been released, especially as many had homes in HSZs to which they were not permitted to return. Sinhalisation of the Tamil areas includes:

"...renaming of places and the building of religious markers of the majority community in areas predominantly inhabited by the minority Tamil, Hindu and Christian communities as well as demographic change."
10. He explained the deficiencies in the December 2011 LLRC report and its implementation:

"61. The LLRC recommendations fall into two parts - the first dealing with accountability and the last phase of the civil war and the second with reconciliation and issues of governance.

62. On accountability the LLRC falls short, endorsing the GOSL stand that it did not target civilians. The LLRC however, concedes that inadvertently, GOSL forces could have been responsible for civilian deaths and calls for an investigation of these instances. The LLRC also states that the Channel 4 documentary contains serious

³³ http://transcurrents.com/tc/2011/02/first_citizens_peace_award_of.html

allegations against the reputation and standing of the GOSL and than an investigation to clear the name and reputation of the GOSL is in order. It further calls for the re-opening of investigations into the murder of 17 humanitarian workers in 2006 and the killing of 5 Tamil students on the beach in Trincomalee in the East, also in 2006.

63. On reconciliation and governance, the LLRC endorses a number of proposals and positions taken by civil society for over a decade. In respect of the Rule of Law, the LLRC recommends that the Police be detached from the Ministry of Defence, independent oversight commissions be established as under the now jettisoned Seventeenth Amendment to the Constitution and that a Special Commissioner for Disappearances be appointed. It also calls for Right to Information legislation and a Victim and Witness Protection Act. ...

65. The GOSL has come up with a National Human Rights Action Plan, which was presented at the UPR and an Action Plan for the Implementation of the LLRC recommendations in July 2012. The latter deals with a selected number of LLRC recommendations and identifies time-lines for implementation ranging from 3 months to 05 years. The Action Plan identifies lead agencies for the implementation of recommendations.

66. Critiques of the Action Plan have pointed to its selectivity, lack of clarity in respect of commencement and the over-reliance on the Ministry of Defence and a parliamentary select committee for implementation."

11. There is little of the witness' own opinion in the report but it is useful for the insight it gives into a number of matters with which we are concerned and in particular the LLRC.

Mr P Anton Punethanayagam, LLB (Col), JPUM

12. Mr Punethanayagam is a barrister practising in Vavuniya, who has represented about 3000 persons in custody either for suspected LTTE links or under the PTA. Before being called to the bar in 1994 in Colombo, where he practised until 2000, he worked with the Institute of Human Rights and Home for Human Rights in Colombo. Mr Punethanayagam is Vice Chairman of the Vavuniya branch of the Sri Lankan Red Cross Society, President of the Vavuniya Bar Association, Member of the Bar Council and the Legal Aid Committee of the Sri Lankan Bar Association and President of the Vavuniya Prison welfare association. He is a magistrate and a Justice of the Peace. His report was presented in writing only and the Tribunal did not have the opportunity to hear oral evidence from him.
13. He states that more than 1000 LTTE cadres are still detained and 350 have been prosecuted, the government's focus being on armed Tamil resurgence rather than past activities. The closing of the main IDP camps was a propaganda measure; the Northern and Eastern Provinces remain on high security alert. At paragraph 8 of his report he stated that:

"8. The North and East remain on a high security alert. In the North, the majority of the internally displaced people (IDPs) have been released from the camps and the main IDP camps were closed down as a measure of propaganda. However there are considerable number of IDPs who are still kept in camps due to the fact that their lands were occupied by the SLA (e.g., Keepapulavu in the Mullaithivu District). The danger of landmines is another problem preventing resettlement. Thousands of LTTE members surrendered to the Sri Lankan Army at the end of the civil war in 2009, but the actual number remains a mystery and the Sri Lankan Government had failed to provide details

of the number of LTTE members and ordinary civilians suspected of LTTE involvement held by them under the Prevention of Terrorism Act and Emergency Regulations. Occasionally, some senior LTTE members were brought before the Court. They are unlikely to get a fair trial, as they do not have access to independent legal representations. Many LTTE suspects are detained without charge or access to legal representatives and no public record of who is alive and detained exists. The plight of the many of the LTTE cadres who had surrendered to the Army in May 2009 is not known (E.g. Balakumaran, Paraa, Karikalan, Lawrence and Rev. Fr. Francis Joseph who came along with the injured LTTE cadres)."

14. He deals with the incorporation of the Emergency Regulations into the PTA and the human rights violations at the end of the civil war. He notes the arrest of a group of Jaffna students who, in reliance on the LLRC recommendations, sought to celebrate Martyrs' Day and were arrested and sent for rehabilitation.
15. In his report, Mr Punethanayagam gave evidence from his own client database in relation to the effect of bribery as a method of release from detention or to enable a person to leave the country. Bribery and corruption is pervasive, especially among the security forces, and well documented:

"26...The paramilitary groups, working alongside the SLA, assist the escape of detainees in order to extort money. In my practice, I have come across several cases where the families use bribery as a last resort to secure the release of a detainee with the assistance of members of the security forces or paramilitary groups.

27. The bribery is very common in the IDP camps as well as the detention centers from which even known LTTE leaders have managed to escape on payment of bribes. Hence it cannot be argued that only people of low interest to the authorities are able to secure their release through a bribe. In my opinion, it is plausible that the detainee was released following the payment of a bribe, even if of significant adverse interest to the authorities. It is unlikely that the person who accepts the bribe would access the detainee's record and change them as released or no longer wanted. Hence such cases would normally be recorded as escaped from detention in the database of the Police. Subsequently an absconder action will be commenced and the detainee's details would be passed to the National Intelligence Bureau.

28. It is possible to leave the country using bribery with the help of an agent. The security officers and immigration officers at the international airport are no exception to the widespread bribery and corruption in Sri Lanka. It is always possible for a person to use influence or bribery to get through the airport without being detained as an LTTE suspect. I have been contacted by approximately 30 clients who managed to flee the country via the international airport whilst in the adverse interest of the authorities and I provided evidence in their asylum cases in the UK, Canada, France, Norway and Australia. Therefore leaving through the airport either with his/her own passport or false identity does not necessarily indicate a lack of interest on the part of the authorities."

16. The reference to the actions of the person obtaining the release of a detainee is speculation. The witness does not suggest that he has any direct knowledge on that point. He is however in a position to confirm that approximately 30 of his 3000 clients left Sri Lanka while of interest using bribery: unfortunately, he does not say when this was in relation to the end of the civil war.
17. The next passage relates to risk to the judiciary. The report deals with the impeachment of Chief Justice Shirani Bandaranayake and her treatment by the Parliamentary Select Committee (PSC) in that context. The Supreme Court of Sri Lanka held that the PSC did

not have the power to impeach the Chief Justice. The Chief Justice was removed from office, and the President responded by appointing Mohan Peiris in her stead. The witness commented:

“However, by over passing these Judicial orders the appointment of the new Chief Justice is clear evidence as to how the independence of the Judiciary has been infringed by the politicians. If this can happen to the Chief of the Judiciary what could be the state of a normal citizen?”

18. The threat to judicial independence is a matter of deep concern for Mr Punethanayagam as a practitioner.

Dr Suthaharan Nadarajah

19. Dr Nadarajah is a lecturer at the Centre for International Studies and Diplomacy (CISD), School of Oriental and African Studies (SOAS), University of London. He holds an MA in International Studies and Diplomacy. He is currently writing a book on international interventions for security and peace in Sri Lanka since 2000. Much of his research and several publications address the Tamil diaspora’s changing relations over the past decade with the international community, the government of Sri Lanka and the LTTE.
20. In 2012 Dr Nadarajah briefed the United Kingdom government’s Independent Reviewer on Terrorism Legislation on the impact of terrorism proscriptions on diaspora political activities and civil liberties.
21. Dr Nadarajah gave both written and oral testimony to the Tribunal. In answer to a number of specific questions posed of him, Dr Nadarajah’s undated report contained the following information.
22. Since the civil war’s end in May 2009, the worldwide Tamil diaspora had become increasingly politically active. Diaspora activities were qualitatively different and of a significantly greater scale than during the civil war. Since 2009 Tamil diaspora activities had two strands, continuing to promote Tamil self-determination, but also campaigning actively for investigation and accountability for the 2009 war crimes and/or crimes against humanity at the end of the civil war. The Tamil diaspora in London was responsible for staging some of the most dramatic large-scale protests of the worldwide diaspora and London was perceived as a focus of diaspora activities. The most prominent youth grouping was the Tamil Youth Organisation, which has chapters in several diaspora centres, including the United Kingdom.
23. There was growing pressure from leading western states, UN bodies and international rights groups for an independent investigation into accountability for war crimes and crimes against humanity committed in 2009. The Sri Lankan authorities were perturbed and disquieted by the successful interactions between the Tamil diaspora, western states and international NGOs. The diaspora in London have staged some of the most dramatic large scale protests of any diaspora.
24. The Sri Lankan authorities’ attitude to the Tamil diaspora in western states had become one of hostility and suspicion. The diaspora was considered to be plotting for LTTE resurgence within Sri Lanka and the GOSL regarded diaspora activities as a threat not just to the Rajapaksa government but to the Sri Lankan state. The driver for this was twofold; first, the Sri Lankan authorities blamed the Tamil diaspora’s activities in the West for increasingly critical attitudes to the Sri Lankan government among the international

community, including the United Nations; second, the Sri Lankan authorities believed the Tamil diaspora to be supporting and collaborating with opposition political parties and civil society groups within Sri Lanka. The diaspora was also perceived as hosting potential war crimes witnesses and providing an opportunity for pan-Tamil political coordination outwith the influence of the Sri Lankan authorities.

25. The Sri Lankan authorities were concerned to monitor, interrupt and prevent connections between Tamils in the Northern and Eastern Provinces within Sri Lanka and diaspora activists worldwide. Some Tamil expatriates worked with the Sri Lankan authorities, reporting on diaspora activities and identifying activists among the diaspora.
26. Dr Nadarajah's research had not been directed towards establishing the attitude of the Sri Lankan authorities to returned asylum seekers. The Sri Lankan authorities' basic position was that asylum seekers were economic migrants. His opinion was that returnees would be treated with hostility and suspicion because the act of claiming asylum would be seen as a criticism of the Sri Lankan authorities, and such individuals gave the international community insights into practices in Sri Lanka that the authorities had made great efforts to protect from international scrutiny.
27. On 3 December 2012 in an open letter to the Australian authorities supporting an injunction application against deportation made by 50 Australian asylum seekers, the Bishop of Mannar, Dr Rayappu Joseph, had appealed to the Australian authorities to stop deportation of Sri Lankan Tamils. Excerpts of his letter had been published in the Sydney Herald and the Age, both mainstream Australian publications.

“...It is common knowledge that those deported back after seeking political asylum abroad are left to live in fear and fright due to being considered traitors by the Government and its armed Forces. Some of them are being forced to become informants creating tension in the communities. They all are meted out with restrictions, threats, intimidation, questionings, surveillance and other forms of harassments and discrimination by the Military, Police and the intelligence officers. ...Thus, it is my considered opinion that it is highly dangerous for the asylum seekers from the North and East of Sri Lanka in Australia to be sent back to Sri Lanka in the prevailing political situation in our regions. ...”³⁴

Since publishing this appeal, and publicly embarrassing the GOSL, the Bishop had been questioned three times by the security forces.

28. The build-up of military might in the Northern and Eastern Provinces was disproportionate to the actual risk of resurgence by the Tigers. President Rajapaksa had sought to justify military deployment on such a scale as necessary for development work in Tamil areas, but any development was of only minimal benefit to the Tamils. There had not been a single attack by the LTTE since May 2009. The Sri Lankan army still maintains 16 out of its 19 divisions in the Tamil-dominated regions, the number of troops stationed there being more than the number in the entire British Army. The military continued to occupy private lands taken during the civil war. Designated High Security Zones (HSZs) had prevented the resettlement of 'ten of thousands' of Tamils.
29. Adverse treatment of Tamils by the Sri Lankan authorities was not likely to be reported in the mainstream Sri Lankan media. There were four main reasons for this: self-censorship, particularly amongst the Tamil media, for fear of reprisals against journalists and

³⁴ Full text of the letter: <http://www.tamilguardian.com/article.asp?articleid=6484>,

Article in The Australian: <http://www.theaustralian.com.au/national-affairs/immigration/sri-lankan-bishop-warns-of-harassment-for-repatriated-tamils/story-fn9hmlgu-1226531633454>.

publications; interference in media content by media proprietors; non state media's dependence on government advertising as its source of revenue; and nationalist sentiments in the Sinhalese media, encouraged by incentives and State coercion. The Sri Lankan authorities restricted information flow via the internet and mobile devices, arbitrarily blocking websites and monitoring telephone and electronic communications.

30. The consequences for those who were, or were suspected of being, witnesses to war crimes committed by the Sri Lankan military were likely to be very severe and such persons faced considerable risk. No single issue had drawn more effort by the Sri Lankan authorities since the civil war's end in May 2009 than thwarting the international campaign for an independent investigation into war crimes and crimes against humanity committed during the final conflict.
31. There was now no systematic collation of either the number or details of human rights abuses in Sri Lanka. The members of the Sri Lanka Human Rights Commission were Presidential appointees. After a long post-2009 hiatus when the appointments of the previous members expired, in February 2011 President Rajapaksa had appointed new members to the Commission. Dr Nadarajah considered the impartiality of the 2011-appointed Commission to be 'demonstrably suspect'.
32. In his oral evidence, in answer to supplementary questions, Dr Nadarajah expanded his evidence-in-chief. He explained that 'Pongu Thamil' meant 'Tamil Upsurge' or 'Tamil Uprising', reflecting a series of uprisings by Sri Lankan Tamils across the Northern and Eastern Provinces, in late 1999 and during the peace process era. The purpose of the uprisings was to advocate Tamil self-determination; it had been a kind of popular resistance movement similar to the *intifada* in Palestine. It was a broad social movement by Tamil activists and in particular, student activists. The GOSL regarded them as Tigers and a significant number of those involved in that movement, particularly students, had been liquidated in "white van" killings during the shadow war between 2005-2007.
33. The December 2012 arrest of students in Jaffna was connected to Pongu Thamil; the LTTE's junior cadres came out of student activism, and student activism in Jaffna University was seen as the beginning of trouble, with the university being regarded as a bellwether of how things were going.
34. In May 2009, it had become very clear that the army was likely to win the civil war. There was already a history of disappearances and silent protests; there had been sit-down protests in Churches and universities, intended as an act of solidarity with the people of the Vanni, and to send a message to the world outside and spark mass protests across the worldwide diaspora.
35. The LTTE was the apex organisation of Tamil politics and the Upsurge consisted of episodic protests, without any overarching organisation, coalescing into a large movement, a 'Blackberry revolution' similar to the Arab spring, in London and Toronto in particular. The movement was from the ground up, not the top down. Nobody would be foolish enough now to organise a new Pongu Thamil; within Sri Lanka, the combination of terror and targeted violence meant that people simply did not show up for demonstrations and even where spontaneous demonstrations occurred, the leaders were spoken to by the Sri Lankan authorities afterwards. The channel for protest now was petitions, which acted as a virtual Pongu Thamil, but people did occasionally take to the streets to mark particular occasions.

36. The other date of importance was Mahaveera, 'Heroes Day' or 'Remembrance Day', when Tamils commemorated murdered LTTE fighters, but it was also a broader social commemoration for families of those who had lost cadres or students in the fighting. The Tamil nation comes together for Mahaveera; even those who did not support the armed struggle would show up for that. LTTE dead were buried, not cremated, in mass heroes' graves, and their families were respected for having sacrificed for the struggle. The Sri Lankan authorities perceived martyr families with resentment and suspicion. A significant number of LTTE cadres had died in the last stage of the civil war; their families did not know where their children were, only that they had participated in activities against the Sri Lankan state. Such families had a social value as people who had lost a child for the cause.
37. Heroes' Day had been celebrated on May 18 every year since the end of the civil war; large numbers of Tamils had been put into a particular space and annihilated, to 'teach them a lesson', and Mahaveera was a day of mourning and defiance. In most countries, there were political rallies on that day; in the United Kingdom, in particular, it was held in Trafalgar Square, marking that set of deaths at the Mullaitivu beach.
38. In cross-examination, Dr Nadarajah clarified that the demonstrations by the Jaffna students in December 2012 were not 'Pongu Thamil' demonstrations; November 27 was Heroes Day in 2012 and there had been a candlelit vigil by several dozen students at Jaffna University. The vigil had been supported by the wider community. The military had responded with arrests and violence. It was the military that had escalated the remembrance into conflict.
39. Hundreds of people had demonstrated, according to the media reports and his own investigation. A large number of students were arrested and subsequently released. Tear gas was used and there were large numbers of security forces present. Those not released were detained under the PTA and then transferred to other parts of the country.
40. Jaffna University was shut down after the arrests; 120 lecturers signed a petition for the students to be released. There was a stand-off between the authorities and the students; some had been released, but the remainder were described by the authorities as LTTE detainees. Other students were refusing to return to classes until the authorities released their colleagues from detention.
41. Arresting a few of the students had a chilling effect; parents would be telling their children not to continue with the protests. Dr Nadarajah had not asked what percentage of the students were held or released; he had seen no report of those who were released having been mistreated or tortured in detention. The Tribunal should bear in mind that two junior staff of the BHC had been in Jaffna at the time; in the past, arrested students had been beaten, tortured, and occasionally, produced in court still bleeding. The GOSL's focus was on 'defeating the diaspora' in the United Kingdom, whereas the diaspora wanted to hold the GOSL to account. Within Sri Lanka, the GOSL had wide-ranging social power. The diaspora was a group of people, and a place, from which its policies could be resisted. The LTTE had been the original obstacle for the GOSL but that task had now been taken up by the diaspora, which had brought the movement outside Sri Lanka. The diaspora had been active at the CHOGM in Perth in 2011 and a new resolution was being tabled for the March 2013 UN meeting.
42. If the GOSL could demonstrate the defeat of the diaspora, that would benefit the government. The GOSL was working hard to conceal aspects of its internal difficulties at home in Sri Lanka.

43. Large numbers of Tamils were returning. Those with British passports were in a better position with possible oversight of what happened to them from the British government. Sri Lankan nationals returning would have more difficulty, since the Sri Lankan state had authority over them. The diaspora was seen as a group of people undermining and harming the GOSL in a number of ways: the GOSL's invitation to Tamils to return and rebuild Sri Lanka was, by and large, simply rhetoric for the international community and hard to take seriously. People had responded, and discovered the reality of the invitation. He did realise that the GOSL's position was apparently contradictory in relation to his account.
44. Mr Hall asked Dr Nadarajah to comment on his position that if the GOSL mistreated returning Tamils, they would be deterred from seeking to return or be unhappy with their return. Dr Nadarajah replied that any such mis-treatment would be in addition to Tamils' knowledge that they were deeply unpopular with the authorities. The appellants had produced evidence of students who returned voluntarily in 2011 to Sri Lanka, where they were picked up and tortured but were nevertheless able to leave again for the United Kingdom. People left even after arrest and torture; the Sri Lankan system was riddled with corruption and even in severe cases, a sufficient bribe could enable an escape. There was no contradiction between the authorities torturing a person in detention, and then taking a bribe to enable them to leave.
45. Other policies of the GOSL would also upset the diaspora; the GOSL was trying to thwart accountability in the face of the international community. The Sri Lankan authorities were keen to deny any evidence which could be used in a war crimes trial. There was a risk to people who were even suspected of having evidence of war crimes, who were present in Sri Lanka between January and May 2009. There were other incidents too, such as the execution of five students in 2007 (the Trincomalee Five), and the killing of 16 international aid workers in 2006, which was the second largest such incident in the world, after the bombing of the UN compound in Baghdad. If there were to be a successful prosecution, then more claims would emerge.
46. Two sets of proceedings had been issued in the United States, the first relating to the Trincomalee Five, filed in 2009, he thought. A journalist who took photographs of that incident had been executed. Numerous further incidents were recorded in local Sri Lankan press. There had been a period during the peace process in Sri Lanka when things seemed to be easing up; cease-fire monitors from 2002 had documented extensive claims, which were not random accusations and for which there probably existed supporting material. Much of the commentary existed in 'alternative media' on websites run from abroad, or from Colombo until they were shut down. The social media was now used more; stories often broke on twitter or Facebook and then moved to the Tamil expatriate websites.
47. When asked how likely it was that news of mis-treatment of individuals returned on charter flights would get out, Dr Nadarajah said it was hard to say. Some things were never reported, others emerged very quickly. One could not say that nothing happened simply because nothing was reported. Frequently, people who had been arrested or tortured, and their family members, were warned not to discuss what happened. Mobile phones and the internet were rare in the Northern and Eastern Provinces but readily available, at a high price, in Colombo. He considered it likely that the internet and mobile providers had to keep in the GOSL's 'good books'.
48. The Tamil population of Sri Lanka should be regarded as much lower than the 3 million it had been; many of those people were now in the diaspora and the figure was based on 20

year old text books. It was also affected by the movement of Sinhalese into Tamil areas in the Northern and Eastern Provinces.

49. In the United Kingdom, Dr Nadarajah understood that there were about a quarter of a million Tamils, as well as second-generation Tamils who might not so describe themselves; in Canada, about 300,000; in Switzerland, and in France, about 40-50,000 each; in Australia, and in Italy, 80,000 each; and in Norway, 15-20,000. Numbers in Tamil Nadu, Malaysia and Singapore were hard to calculate. There were 100,000 registered Tamil refugees in camps in Tamil Nadu but no real numbers for those who travelled back and forth between Tamil Nadu and Sri Lanka. These were not his own figures, but those of others.
50. The Tamils diaspora in Britain was now the most politically active; in the last three years, it had gone from 'way behind' and much more low key to become the most active now. There had been an eruption of young activism in the United Kingdom; such activism was particularly prominent in the United Kingdom, Canada, and Europe generally, but the major centre of international Tamil affairs now was London. There were a large number of universities with Tamil societies, and English was the language of international affairs.
51. In answer to questions from the Tribunal, Dr Nadarajah said that he had not travelled to Sri Lanka since 2003, but that he had researched the position in Sri Lanka since that date; his research was carried out by Skype or telephone or when people travelled out of Sri Lanka. A large number of people came to the United Kingdom, sooner or later. He sat by, like a fisherman, and people like journalists and so forth would talk to him, secure in the knowledge of what use he would make of what they said.
52. There was a perception that Skype was more secure than the internet, which was subject to arbitrary blocking of websites and known to be under surveillance. The authorities relied on the chilling effect of people knowing that there was oversight of their conversations and arbitrary restriction. He had seen posts from people who might have more protection. When using Hotmail or Gmail, people took it for granted that the security forces had access even if those posting were not in Sri Lanka. People had become very careful with their phrasing and there was a feeling of covert menace. Dr Nadarajah was disciplined in what he wrote, and careful what he asked; a number of the people he had spoken to had been murdered. People in Sri Lanka had warned him not to write to particular addresses, and in those cases, he waited for his correspondents to get in touch, perhaps from a 'clean' email address.
53. In response to resumed cross-examination from Mr Hall, Dr Nadarajah said that his understanding was that, for Hotmail, the computer could always be traced. For some people, he maintained a dedicated email address just for that correspondence. There were internet cafes in Jaffna and in Colombo.
54. He had been told by a very senior defence correspondent in Sri Lanka at the end of the 1990s that the GOSL was about to upgrade surveillance capability with the help of United States military intelligence. The American Center in Colombo had been opened by an important local Sri Lankan military commander.
55. People accepted the surveillance; those who used mobile phones relatively freely were among the group of high profile Tamils whom the international diplomatic corps met when going to Jaffna, which gave them a measure of protection.
56. There was no re-examination.

APPENDIX L

PRESS REPORTS

1. The 'Background Bundles' before us contained approximately 400 folios under the heading 'News Articles'; dating from late 2011 to early 2013. The articles relied upon are drawn from a variety of sources, including newspapers published in Sri Lanka and abroad, Yahoo News, Amnesty International Urgent Action papers, and articles published by Human Rights Asia, the Asian Human Rights Commission and The Economist.
2. The articles from 2013 cover a broad range of topics. Yahoo News reports on demonstrations in Colombo in January 2013 against the passing of a legislation extending, to 48 hours, the time police can hold suspects without a warrant. A report in the Daily Mirror (Sri Lanka) of the same month notes that almost 1000 Sri Lankans had returned to Colombo from Australia since August 2012, 213 of those returns being voluntary. 19 Sri Lankan nationals were returned by Australia on 17 January 2013. A further article published by the UN news site ReliefWeb³⁵ states that over 1200 persons returned from Tamil Nadu to Sri Lanka in 2012.
3. Other articles from 2013 claim that thousands of people are still awaiting return to their homes in northern of Sri Lanka; that 44 of 47 people arrested in Jaffna and Kilinochchi were detained in Boosa detention facility; and that, according to both the Lanka News Web³⁶ site and the Sydney Morning Herald, Sri Lankan government operatives intimidated peaceful demonstrators against the Sri Lanka cricket team, in Australia, these protests having been both filmed and photographed. On a related topic the UK based Guardian newspaper reported on the Sri Lankan President's cancellation of his key note speech in the City of London in June 2012 as a consequence of the large scale demonstrations in London by Tamil rights groups
4. As to the news articles from 2012; in March 2012 BBC news reported the United National Party as stating that the situation in Sri Lanka was deteriorating on a daily basis and an unnamed Senior Police Officer as stating that there are 'plenty of white vans in Sri Lanka'.
5. The Economist reported in October 2012, along with a numerous other news agencies, that the Secretary of the Judicial Services Commission had been seriously assaulted in Sri Lanka shortly after issuing a press release claiming that efforts were being made by the Sri Lankan government to destroy the independence of the judiciary. Numerous later reports relay information relating to the impeachment of the Sri Lankan Chief Justice, generally expressing opinion as to the politically motivated nature of the impeachment.
6. A number of articles refer to the Sri Lankan government's occupation of the Northern Province. India's Economic and Political Weekly analysed the reasons and intensity of military investment in the Northern Province as follows:

"The Northern Province as a whole and the Vanni in particular are amongst the least densely populated regions of Sri Lanka. According to Department of Census and statistics estimates, the population of the Northern Province in 2011 was 9,97,754. It implies that a population roughly half the size of Colombo district or equivalent to a medium sized Indian city is effectively under the control of the staggering number of 15 army divisions in addition to other military units and forces.
...

³⁵ reliefweb.int

³⁶ www.lankanewsweb.com

Given that 75% of the army's divisions are stationed in the Northern Province, in addition to other formations such as task forces and independent brigades and regimental units, it is not unreasonable to assume that at least 60% of the army, i.e., approximately 180,000 personnel, are stationed across the Northern Province.

However one must add to this 180,000, the share of personnel from the navy, the air force, civil defence forces, intelligence and the police, including the special task force, etc, based in the Northern Province. Assuming that the combined presence of all these latter entities accounts for 10% of the army's strength (18,000), again a very conservative estimate, this makes for a total of 198,000 security personnel in the province. This amounts to a ratio of 1 security personnel for every 5.04 civilians in the Northern Province or a force density of around 198.4 security personnel per 1,000 civilian population.

Troop Density: Some Comparisons and Context

It is, however, important to put this figure (a force density of 198: 1,000) in context, to underline its unprecedented nature. A recent historical analysis undertaken by the Institute of Defense Analyses (IDA), for the US Department of Defense, of 41 counter-insurgency operations worldwide suggested that a density of 40-50 troops per thousand population (or 1 security personnel for 20-25 civilians) might be required for reasonably high confidence (>80%) of operational success (Kneece 2010). Note that this recommendation is for an active theatre of operations and not for a situation post the cessation of hostilities. A 2012 memorandum of the US Department of the Army, building on the IDA study, notes that the force density in Iraq in 2007 (the time of the "surge") was around 20 per thousand civilians. According to a Joint Doctrine Publication (JDP) of the UK Ministry of Defence, in the mid-1970s the force density in Northern Ireland was 23 security personnel per 1,000 population. Goode (2009-10: 46) estimates that counter-insurgency security forces under French command in Algeria peaked at nearly 60 per 1,000 residents while the Russians committed more than 150 soldiers per 1,000 civilians in Chechnya in 2003, in the course of the bloody second Chechnyan war. A recent estimate of Jammu and Kashmir in India, widely considered amongst the most militarised regions in the world, put the number of security forces at 5,00,000 for a population of 13 million or one security personnel for every 26 civilians.

By comparison, there is little doubt that the extent of the military presence in the Northern Province is extraordinarily high, especially given the fact that the civil war itself came to an end three years ago. Interestingly, the UK JDP referred to above, notes that during operations against the LTTE in 2008, the force density was already as high as 60 security personnel per 1,000 civilian population but as pointed out the military expanded very rapidly right up to May 2009 and beyond with most of these personnel being committed up north, which is still the case. Moreover, Sri Lankan forces gained ground and moved deeper into the Vanni, which has very low population densities. Hence, the estimate of a force density of 198: 1,000 or a ratio of 1 security personnel for around every five civilians in the north still appears to hold good. In fact, even if one were to cut that estimate by a full 50%, it yields a force density of 99 per 1,000 civilians or 1 security personnel for nearly every 10 civilians, which is still extra-ordinarily high, in comparison to many ongoing and past conflicts (including under some repressive colonial occupations), let alone three years after the civil war.

So why is there is such a heavy military presence in the North? There are at least three reasons for a continued presence of some level of security forces. First, the north was heavily militarised by the LTTE and the civil war left behind a heavy concentration of weapons and stray and unexploded ordinance (UXO), while undetected mines in some areas still present a danger. However, it is important to note that in addition to the Sri Lanka Army's own Humanitarian De-mining Unit, there at least eight other organisations engaged in demining and clearance of UXO, which are proceeding apace although a mine-free Sri Lanka is still a few years away (Abhayagunawardena 2011). It is far from evident that demining and UXO clearance tasks are a hugely significantly reason for such high levels of military presence across the north as many areas have in fact been already cleared.

Second, the fragility of the post-war environment also demands a stabilising security presence. It should not be forgotten that the reign of the LTTE, which ran most of the north for over two decades, was itself brutal and arbitrary, undoubtedly leaving fissures and cracks in the Tamil society. Then there are the insecurities of the returning internally displaced persons (IDPs) from the Muslim community – forcibly evicted by the LTTE, with 48-hour notice, from the Vanni more than 20 years ago – who are still only just making their way back, only to find in some cases that the lands and houses they were forced to leave behind have long been in the possession of others. As much as these are reasonable arguments for a security presence, in the democratic world at least, providing such a sense of security, ensuring the rule of law and the sort of stability needed in the Northern Province would actually be a civil policing function rather than a military call of duty. Indeed civil policing is central to ensuring that conditions, which may encourage any sort of organised violence do not recur. It is also worth noting here though that there has been little evidence of any regrouping, let alone resurgence, of the LTTE or its supporters.”

7. The Nation newspaper reported in May 2012 on a speech by President Rajapaksa declaring that there would be no removal of the military camps from the Northern Province of Sri Lanka as to do so would allow Eelamists to achieve their aim, albeit by a different method to that used by the LTTE. Various articles, including from the BBC and Yahoo News, identify the reason behind the militarisation of the Northern Province as being a fear by the Sri Lankan authorities of a resurgence of the LTTE, both within and outside Sri Lanka. TamilNet reports that in October 2012 the Sri Lankan Defence Ministry sought a 26% increase in its budget, to 290 billion rupees.
8. In April 2012 the Sri Lanka Daily Mirror reported that after having received information from a detained LTTE member, security forces engaged search operations in the Eastern province of Sri Lanka, in order to find LTTE cadres whom it was suspected had returned from India. In November 2012 ‘Ceylon Today’ reported that the TID launched investigations seeking identify those who had been responsible for hoisting LTTE flags in the Northern and Eastern provinces to mark Prabakharan’s birth. A number of the news articles also report information on the abduction, arrest and detention, of Sri Lankan national Tamils, including the arrest in December 2012 of 13 students of the University of Jaffna, 6 of whom were said to have been tortured and thereafter sent for “military rehabilitation”.
9. Both TamilNet and the Sri Lankan Guardian report on the detention in Sri Lanka of British Citizens of Tamil origin, the former referring to an arrest, torture and interrogation about diaspora activities, of a British male, upon his arrival in Sri Lanka in October 2012; the latter reporting of the arrest of a 51 year British female, of Tamil origin, upon her attempted exit from Sri Lanka. The same article further reports of the British High Commission’s role in trying to obtain her release. Arithu.com reported that a male French Tamil had been arrested in Jaffna in August 2012 for having an LTTE tattoo on his arm.
10. TamilNet and the Asian Human Rights Commission report on abductions in Colombo and observe the lack of political will to stop them; the latter organisation claiming, in April 2012, that such abductions formed a part of the approved counter insurgency strategy of the Sri Lankan government.
11. The Guardian reported on the Committee for the Protection of Journalists call to the Sri Lankan government to stop its intimidation of journalists. The UN Committee Against Torture (UNCAT) also detailed at some length, in its report of November 2011, allegations of intimidation, harassment, physical attacks and politically motivated charges against independent journalists, human rights defenders, lawyers and civil society actors.

Appendix M

ANALYSIS OF UNREPORTED TRIBUNAL DETERMINATIONS SUBMITTED BY TAG AND THIRD APPELLANT³⁷

TAG determinations

Page ref = TAG bundle of evidence.

<u>WHERE PICKED UP</u>	<u>RESPONDENT REPRESENTED?</u>	<u>PICKED UP IN AIRPORT</u> NOTES	<u>PICKED UP IN COLOMBO</u> DATE OF PICK-UP	NOTES
Colombo airport	No	Held overnight at airport	May-09	Released by bribe
Vavuniya	Yes			
Not clear	Yes			
Mannar	No			
Not clear	Yes			
Vavuniya	Yes			
Trincomalee	Yes			
Colombo (Pettah)	No		Sep-11	Released by bribe and with own passport
Mannar	No			
Colombo airport	Yes		Feb-11	Released by bribe / travelled on own passport
Vavuniya	No			
Vavuniya	Yes			
Mullaitivu	Yes			
Point Pedro	Yes			
Colombo (Wellawatte)	Yes		Feb-10	Released by bribe / travelled on own passport
Colombo airport	Yes		Mar-11	Released by bribe / travelled on own passport
Not clear	Yes			
Jaffna	No			
Vavuniya	No			
Not clear	Yes			
Vavuniya	Yes			

³⁷ Analysis prepared by Mr Will Hays for the respondent and annotated by Ms Alison Pickup, on behalf of A3. Information in Ms Pickup's annotations accepted as accurate by Mr Jonathan Hall for respondent.

Colombo (Wellawatte)	Yes		Apr-11	Released with bribe
Not clear	Yes			
Not clear (1/2 hour from airport)	Yes			
Jaffna	Yes			
Jaffna	Yes			
Colombo	No		Jul-11	Released by bribe / travelled on own passport
Not clear (a check point)	No			
Colombo	No		Mar-11	Released by bribe
Vavuniya	Yes			
Not clear	Yes			
Vavuniya	No			
Mannar	Yes			
Mullaitivu	No			
Vavuniya	Yes			
Not clear	No			

Determinations produced by A3³⁸

Page Ref = bundle Tab H

<u>WHERE PICKED UP</u>	<u>RESPONDE NT REPRESENTED?</u>	<u>PICKED UP IN AIRPORT</u>	<u>PICKED UP IN COLOMBO</u>	<u>WHERE PICKED UP</u>
		<u>NOTES</u>	<u>DATE OF PICK-UP</u>	
Colombo Airport	Yes	Detained and tortured at airport <i>A3 comment: initially held for about 2 hours at airport in a 'room with windows all round' (para 45, CB H16), questioned by one officer, slapped and hit</i>	Jun-11	Released by bribe; <i>A3 comment: date of hearing: 26.10.2012; Bribe of 1.5 million rupees paid by A's father (para 59, CB H19); FFT briefing referred to (para 77, CB H22)</i>

³⁸ This data was extracted from unreported determinations produced by the third appellant's representatives, who made additions to the tabular analysis prepared by Ms Pickup. These are shown in italics as 'A3 comment'

Jaffna	Yes		<i>A3 comment: date of hearing - 03.10.2012 (Upper Tribunal)</i>
Jaffna	Yes		<i>A3 comment: - date of hearing 12.11.2012</i>
Not clear	Yes		<i>A3 comment: - date of hearing 31.07.2012; Upper Tribunal</i>
Colombo; <i>A3 comment: detained at home of former LTTE contact whom he visited (para 9, CB H73)</i>	Yes	Jan-12	Released by bribe / travelled on own passport, <i>A3 comment: date of hearing 20.07.2012; note account at para 11 (CB H73) of how family found out his location; at the airport 'the agent told the appellant to go to a particular checking agent. The agent had influence and knew people at the check in. There was a lot of corruption among the airport officials' (para 13, CB H74; and judge's findings para 51, CB H85)</i>
Not clear (driving away from Colombo airport); <i>A3 comment: interrogated at airport about involvement in demonstrations in London and released (para 7 CB H93); later arrested en route from airport after collecting luggage (para 8, CB H93).</i>	No		<i>A3 comment: date of hearing 16.07.2012; army officer contacted appellant's parents seeking a bribe of 30 lakhs rupees for her release (para 14, CB H94); judge rejected possibility of fabrication/that injuries inflicted by a third party (para 24, CB H96)</i>
Not clear	Yes		<i>A3 comment: date of hearing 06.07.2012;</i>

Jaffna;	Yes		<i>A3 comment: date of hearing: 06.01.2012</i>
<i>A3 comment: transferred to 4th Floor of CID headquarters in Colombo (para 2, CB H113 and para 11 CB H115)</i>			
Not clear;	Yes		<i>A3 comment: date of hearing 19.01.2012; judge referred to evidence of arrest of returnees from UK (para 42, CB H134)</i>
<i>A3 comment: detained from home which appears to have been in Colombo; held at 4th floor CID building in Colombo (para 16, CB H129)</i>			
Not clear	Yes		<i>A3 comment: date of hearing 14.12.2011 (Upper Tribunal); UT considered and rejected possibility of fabrication and infliction of scars by third parties (para 36, CB H148)</i>
Colombo	Yes	2008	Found not credible;
<i>A3 comment: A's account was that he was arrested at the airport on 29.08.2008 and then transferred to Negombo police station, where he claimed to have been beaten and tortured for 8 days (para 16, CB H152) (this claim was rejected by the UT)</i>			
Not clear;	No		<i>A3 comment: date of hearing 24.11.2011</i>
<i>A3 comment: arrested from wife's home in Colombo (para 9.7, CB H171)</i>			
Not clear	Yes		<i>A3 comment: date of hearing 09.11.2011</i>

Omanthai checkpoint	Yes				<i>A3 comment: date of hearing 15.07.2011 (Upper Tribunal); possibility of infliction of scars by third party was rejected by UTJ King (para 44, CB H194)</i>
<i>A3 comment: identified by a masked man who pointed him out while passing through checkpoint (para 18 CB H189)</i>					
Colombo airport	No	Held and beaten at the airport;	May-09	Notes - date of hearing 29.09.2010	
		<i>A3 comment: Held for 8-9 hours at the airport, questioned, fingerprinted, photographed and 'beaten up', then transferred to another location (para 13, CB H202)</i>			
Jaffna	Yes				<i>A3 comment: date of hearing 16.10.2012</i>

Granted by Respondent
(No appeal necessary)

WHERE PICKED UP

NOTES

Vavuniya (paras 40-41, CB H236)

Granted by SSHD on 28.08.2012 (CB H223)

Not stated

Granted by SSHD (statement of J Kerr, para 4, CB H247)

Vavuniya (para 6, CB H265)

Granted by SSHD (statement of J Kerr, para 3, CB H247)

Batticaloa

Granted by SSHD (statement of J Kerr, para 2, CB H246)