**Asylum and Immigration Tribunal**

TK (Tamils – LP updated) Sri Lanka CG [2009] UKAIT 00049

**THE IMMIGRATION ACTS**

**Heard at Procession House**
**On 27 & 28 October 2009**

**Before**

**Lord Justice Carnwath, Senior President of Tribunals**
**C M G Ockelton, Deputy President, Asylum and Immigration Tribunal**
**Senior Immigration Judge Storey**

**Between**

**TK**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Chelvan, instructed by Lawrence & Co. Solicitors
For the Respondent: Mr C Staker, instructed by Treasury Solicitors

a) *The risk categories identified 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, App.no. 25904/07, remain valid.*

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 north (or east) as such, but persons considered to be either LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms.*

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.*

d) *The practice of immigration judges and others of referring to "objective country evidence", when all they mean is background country evidence, should cease, since it obscures the need for the decision-maker to subject such evidence to scrutiny to see if it conforms to legal standards for assessing the quality of Country of Origin Information (COI) as identified by the ECtHR in NA and as set out in the Refugee Qualification Directive (2004/83/EC), Article 4(1), 4(3)(a), 4(5),4(5)(a) and 4(5)(c) and the Procedures Directive (2005)85/EC), Article 8(2)(a)and (b) and 8(3).*

## DETERMINATION AND REASONS

1. The case of LP (LTTE area – Tamils - Colombo – risk?) Sri Lanka CG [2007] UKAIT 00076 has served as a Tribunal country guidance case on Sri Lanka since August 2007. Along with the case of AN & SS (Tamils – Colombo - risk?) Sri Lanka CG [2008] UKAIT 00062 (and subject to what is said at para 77 below), it continues to specify relevant risk factors for cases concerning Tamils from Sri Lanka. In a judgment of 6 August 2008, NA v UK App.no. 25904/07, the European Court of Human Rights (ECtHR) considered LP in careful detail, reaching very similar findings of fact. Since NA there have been a number of cases in our higher courts which have had reason to consider LP and AN & SS: see Appendix B. Although they have qualified one aspect of AN & SS, none has addressed the major changes that have taken place in Sri Lanka in the past year. That is to be expected. The higher courts supervise the Tribunal's country guidance system, but fact-finding and guidance on country conditions are primarily to be undertaken (normally at a senior level) by the specialist body dealing with statutory asylum-related appeals – presently the Asylum and Immigration Tribunal and, in the near future, by judges of the Immigration and Asylum Chamber of the Upper Tribunal (UTIAC).

2. When the Tribunal heard LP and the ECtHR decided NA the episodic peace process had begun to unravel, leading to a deteriorating security situation. A new period of fierce military conflict commenced soon afterwards. The present case affords the Tribunal an opportunity to look at whether the guidance given in LP requires modification in the light of recent developments. The major development that has taken place is, of course, that in May 2009, after a protracted civil war lasting 26 years, the Liberation Tigers of Tamil Eelam (LTTE) was militarily defeated.

3. Another development concerns the great number of Tamils in the north in camps. In the short period since we heard this case in late October, major media sources have reported a significant change in the situation of those in these camps. Since the precise situation is still unclear, and may remain so for some time, we do not think it would be right to delay our decision in order to learn more or to ask the parties what they think about these reports. For reasons that will become clear below, we do not consider that such reports significantly affect our assessment or the guidance we

give. All that is relevant to mention here is that in the period leading up to May 2009 large numbers of people, mostly Tamils, had been displaced by the armed conflict ending up in internationally-supervised IDP camps in the north. But the post-war camps were of a different character. They contained many of the same people and served to feed and accommodate them, but they were under the control of the SLA. Subject to some exceptions, people in these camps were deprived of their liberty. The numbers at their peak were said to comprise the largest number of displaced persons anywhere in the world (the Manik Farm complex near the town of Vavuniya had 230,000 persons alone). Under pressure from the international community, the Sri Lankan authorities pledged to facilitate the speedy return of all of those in the camps to their home areas except for actual or suspected LTTE members who were being kept in "rehabilitation camps" (around 10,500-12,000) as soon as those areas have been de-mined. Even if the very latest reports are correct, and large numbers have been allowed to leave the camps and return to their home areas, it is clear that, by virtue of the damage wrought on those areas by the war, there will continue to be a very significant number of Tamils in camps in the north, even if now free to leave if they choose.

4. In country guidance cases the Tribunal has a dual function. As in every case, it must decide the appeal before it, but it also seeks to identify relevant risks that arise in relation to classes or groups of persons. It does this in two main ways: (i) by identifying one or more "risk categories" (usually when the evidence is sufficiently clear-cut to justify a finding that the generality of persons in a particular category are at risk); (ii) by delineating "risk factors", i.e. factors of particular significance when assessing risk, a mode usually chosen when the evidence is less clear-cut. In LP the chosen approach was to identify risk factors. The appellant in this case is a national of Sri Lanka who is a Tamil and who is from the north of that country. The principal country guidance issue is whether (since LP) Tamils who face enforced removal from the UK, particularly Tamils from the north or east of Sri Lanka, currently face a real risk on return of adverse treatment at the hands of the Sri Lankan authorities. As in LP and NA, the primary focus is on the risk on return to Sri Lanka in Colombo

N.A v UK

5. We shall have cause throughout this decision to refer to NA. The judgment of the ECtHR in this case is a milestone in two different respects. First, while the Court has quite often undertaken detailed assessment of country conditions in asylum-related cases invoking Article 3, it had never before done that by reference to country guidance criteria as set out by a domestic court or tribunal, in this instance the UK AIT. At para 129 it stated that when considering the individual risk to returnees, it was "in principle legitimate, to carry out that assessment on the basis of the list of 'risk factors'" as identified by the AIT in LP. By virtue of the disagreement between the parties in NA as to the relative value of particular sources, the December 2006 UNHCR Position paper in particular, the Court also felt it necessary to articulate in greater detail than previously its view of the relevant criteria that decision makers should apply to Country of Origin Information (COI). In the latter respect, it seems to us that, at least within the context of Article 3 jurisprudence, judges should now be assessing COI by the standards set out by the Court at paras 132-135 of NA (which can be summarised as accuracy, independence, reliability, objectivity, reputation,

adequacy of methodology, consistency and corroboration). Indeed, within the closely related context of asylum and humanitarian protection claims, very much the same standards have now become, by virtue of EU legislation, legal standards: see the Refugee Qualification Directive (2004/83/EC), Article 4(1), 4(3)(a), 4(5),4(5)(a) and 4(5)(c) and the Procedures Directive (2005)85/EC), Article 8(2)(a)and (b) and 8(3).

6. Secondly, it is clear that the court's endorsement of the validity of a system of country guidance such as is applied in the UK was not unconditional. It was given only because the Court was satisfied that the UK AIT had conducted a careful and comprehensive assessment weighing different sources according to their objective merit. The Court also fully recognised that country guidance is not inflexible; it must be applied by reference to new evidence as it emerges; otherwise it would fall foul of the principle of ex nunc assessment of risk. Our country guidance system can only expect to have authority domestically and command respect abroad, therefore, if it maintains these standards.

7. The emphasis we place on assessment based on objective merit prompts us to make one further comment. It is still widespread practice for practitioners and judges to refer to "objective country evidence" when all they mean is background country evidence. In our view, to refer to such evidence as "objective" obscures the need for the decision-maker to subject such evidence to scrutiny to see if it conforms to the COI standards just noted. This practice appears to have had its origin in a distinction between evidence relating to an individual applicant (so-called "subjective evidence") and evidence about country conditions (so-called"objective evidence"), but as our subsequent deliberations on the appellant's case illustrate (see below paras 153-9), even this distinction can cause confusion when there is an issue about whether an appellant's subjective fears have an objective foundation. We hope the above practice will cease.

Appeal history

8. The appellant in this case is a national of Sri Lanka who is a Tamil and who is from the north of that country. Her appeal has a lengthy history, which we detail below, but the upshot is that we are now tasked with conducting a second stage reconsideration of her appeal.

9. The appellant applied for asylum on 10 November 2006 claiming to have entered the UK by air four days previously. On 8 May 2007 the respondent refused her application. In a determination notified on 7 September 2007 Immigration Judge (IJ) Higgins dismissed her appeal. The appellant was successful in obtaining an order for reconsideration. In a decision dated 3 January 2008 Senior Immigration Judge (SIJ) Southern found a material error of law (see Appendix A). On 8 April 2008 IJ Mitchell heard her appeal afresh but again her appeal was dismissed. On 11 August 2008 permission to appeal to the Court of Appeal was granted. A consent order issued by Longmore LJ ensued on 8 January 2009, remitting her case to the Tribunal. It is now before us.

10. It is important to say something about the basis on which our reconsideration is to proceed. The statement of reasons that accompanied this order was made on the basis that IJ Mitchell arguably failed to take into account the deteriorating security

situation in Sri Lanka. However, it was agreed that his findings of fact made on the appellant's history should stand. He concluded that the appellant's account was credible and that the findings of fact made by IJ Higgins should be accepted.

11. The appellant's account is that she is a Tamil from Kilinochchi. Born in 1975, she spent her early years there but moved with her family to live in Vavuniya from 1999 to 2002. Her father was shot dead by Indian peace-keepers in 1987. She formed a relationship with a Mr X. Her mother made enquiries and discovered he was involved with the LTTE. Her mother disapproved of that. The appellant found work as a computer demonstrator. As a result of a thaw in relations between the Sri Lankan government and the LTTE, the appellant and her mother were able to return to Kilinochchi in December 2002. Mr X visited her there; her mother became reconciled to their relationship; in September 2003 the two of them decided to marry. That marriage was not to be: Mr X identified himself with the Karuna group (who had broken away from the LTTE) and was unable any longer to visit Kilinochchi, which was then LTTE heartland. The LTTE detained the appellant for two weeks, seeking to discover where Mr X had gone, but released her on condition she keep them informed of visitors to her home. Events in the first part of 2006 led to a decision that she should leave Kilinochchi; the peace process had begun to collapse; violence escalated. Being afraid the LTTE would press her into service, her mother sent her to her uncle in Vavuniya who took her to his brother-in-law in Colombo. She stayed there for three months. On 28 September 2006 her uncle's wife was taking her to a nearby hospital because she was ill. Crossing the Wellawatta bridge by rickshaw, they were stopped at an army checkpoint. She produced her ID card showing her registered address as Kilinochchi. She did not speak Sinhalese but through her aunt they asked her a lot of questions, including what she was doing in Colombo. In her statement of 19 December 2006 she said:

> "They suspect me as an LTTE suicide member and plant the bomb in Colombo. My aunty … explained a lot, but they said 'She is an LTTE member and we are going to arrest her'. They arrest me at that spot and took me to an army camp for further inquiry, where they beat me and gave further electric shock."

12. The appellant went on to describe how on the third night, two men without uniform came to her cell, saying they would arrange for her release in return for sexual favours. Her refusal was of no avail; both raped her. On 10 October 2006 two army men fetched her from her cell and took her in an army jeep; after a half an hour drive they told her to get out. She still had her ID card with her. At a Hindu temple nearby, she was met by Mr X who explained that when he was in the same camp (as one of the Karuna group co-operating with the Sri Lankan army), he had learnt by chance she was there. He had then called the camp commander asking that she be released. The commander had agreed. In her interview record, the appellant said her boyfriend had assured the commander she had nothing to do with the LTTE. After returning to her uncle's house in Colombo the appellant, with help from her uncle, decided to leave Sri Lanka. Mr X still wanted to marry her but she no longer wanted that as in her eyes his involvement with the LTTE meant he must be a murderer. We shall say more about her latest circumstances later.

Procedure

13. The hearing of this case lasted two days. As with other cases identified as suitable for intended country guidance, the parties had undertaken considerable preparation in advance; the Tribunal had held a Case Management Review (CMR) hearing at which the specific country guidance issues (involving a review of LP) were identified; and further directions were given about production of background country reports and expert witnesses. Further correspondence took place to ensure preparations were proceeding satisfactorily. All this was designed to ensure the hearing before us could be devoted simply to hearing evidence and submissions. That did not happen. One major item of evidence relied on by the appellant, the expert report from Dr Smith, was only produced the day before the hearing, but both sides were at fault. On the first day of the hearing time was lost dealing with matters that should have been resolved between the parties beforehand. At the end of the second day we had to direct that Mr Chelvan conclude his half-completed submissions in writing. It is appropriate, therefore, that we make several linked observations:

(i) First, a party who instructs an expert should make very clear what ground the expert is expected to cover. In this case much of Professor Good's main report was quite unnecessarily taken up with treatment of events predating LP. We would add (in anticipation of our comments on some aspects of Professor Good's report) that the expert should be reminded of the need to address clearly and objectively the relative weight of "disparate pieces of evidence" (see per Brooke LJ in Karanakaran v SSHD [2000] INLR 122, 133).

(ii) Secondly, all parties should understand that when a case is set down to review existing country guidance, the latter is to be taken as a starting-point. The Tribunal has not ruled out that in some cases there could be a challenge to the historic validity of Tribunal country guidance (although such would require the production of evidence pointing both towards and against the accuracy of that guidance at the relevant time: see AM & AM (Armed conflict; risk categories) CG Somalia [2008] UKAIT 00091); but that will be rare. Ordinarily (as here), the process is incremental: the parties do not seek to dispute that the Tribunal's country guidance was valid at the time, but only to argue that it now needs alteration in the light of fresh evidence (see AIT Practice Direction 18.2). That being the case, there is no place for the wholesale reiteration of background country evidence that was before the previous Tribunal. Expert reports should not trawl over old ground. There may be limited scope for some earlier referencing material, e.g. below we discuss the extent to which recent UNHCR evidence has modified the 2006 UNHCR position paper on Sri Lanka. It may sometimes be helpful for an expert to recapitulate important historical events. Here, however, brevity is imperative.

(iii) Thirdly, whilst it is legitimate for the parties to seek to ensure the Tribunal has before it the most up-to-date materials (because asylum-related appeals are governed by the Ravichandran principle: see Saber (AP) v the Secretary of State for the Home Department) [2007] UKHL 57, para 13), it is quite unacceptable (as happened in this case) that large supplementary bundles should be served on the eve of the hearing. Proper prior preparation and proper compliance with Tribunal directions should obviate the need for anything except supplementary skeleton arguments and small numbers of the most recent press cuttings. Failure to observe Tribunal directions governing such

matters not only causes delay during the hearing but puts undue strain on the Tribunal who seek to come to such hearings fully apprised of all the documents pertaining to the case.

14. On the morning of the hearing Mr Chelvan made two applications, one for a witness summons, the other for an adjournment. We refused both. The witness summons was requested in respect of one of the authors of a report by the Foreign and Commonwealth Office Migration Directorate who had conducted interviews of a range of sources in Sri Lanka during the period 23-29 August 2009 (hereinafter the "FCO report"). The respondent had earlier undertaken to make one of its authors available to give evidence but this had not proved practicable. Mr Chelvan submitted that it was prejudicial to the appellant's case if he was unable to cross-examine at least one of them. In our view the respondent had used best endeavours to make one of the authors available; the respondent was not in any event under a duty to call either as a witness; the report was essentially an information-gathering, not an evaluative, exercise; Professor Good in his summary report had broadly approved its methodology; it was open to Mr Chelvan in submissions to ask us to attach less weight to the report by virtue of his inability to cross-examine upon it. As regards Mr Chelvan's application for an adjournment, which was based in part on his desire to be able to question one of the FCO report's authors and in part on his wish for more time to obtain further evidence in response to late additional material served by the respondent, we considered that none of these factors justified adjournment. In the event we allowed Mr Chelvan short adjournments during the hearing and a short time following the completion of the hearing to complete his submissions.

The evidence of Dr Smith and Professor Good

15. As often happens at such hearings the bulk of the live evidence comprised examination of the experts. In LP and in AN & SS the Tribunal heard from both Dr Smith and Professor Good. The same two appear as experts in this case. Leaving aside our disappointment that both (especially Professor Good) should have seen fit to go over old ground, it is convenient if we summarise the written and oral evidence of each in turn.

Dr Smith: written report

16. Dated 26 October 2009, Dr Smith's written report describes how the civil war between the Sri Lankan government and the LTTE had gone through four phases or chapters. The last phase – "Eelam IV" – had recommenced in 2006 and intensified significantly through 2007. Weakened by the defection of Colonel Karuna, the LTTE commander in the east, Sri Lanka's military leaders were able during 2008 and early 2009 to focus far more on fighting the LTTE in the north and throughout the early months of 2009 were able to force the LTTE to retreat to a narrow tract of coastline to the north of Mullaitivu. Both sides suffered heavy casualties, but on 16 May 2009, President Rajapakse was able to declare a resounding military victory. During the final days the LTTE leader, Prabhakaran was killed, along with the bulk of his close advisors.

17. The plight of many Tamil civilians from the north during the final stages of the conflict caught the attention of the world's media. On the one hand, he said, "it

became increasingly evident that the LTTE had used its own people as a protective shield"; on the other hand, he said, "the Sri Lankan security forces paid scant attention to the plight of the civilian victims and the result was suffering and carnage on a massive scale, - an estimated 20,000+ civilians died during the final days of Eelam IV and thousands more were injured".

18. In Dr Smith's opinion, although the LTTE has been defeated as a conventional military force "for many years to come", it remains to be seen whether it will re-emerge. If it does, new recruits will have to come primarily from the ranks of the IDPs originally from the Vanni. Dr Smith considered that the LTTE's international procurement network was now - following the arrest in Kuala Lumpur on 6 August 2009 of a man called KP, aka Selvaraja Pathmanathan - "rudderless and may have became criminalised and significantly disrupted". The impact of LTTE's military defeat on the Sri Lankan diaspora was uncertain. The future leaders of Tamil nationalism might not be associated with the LTTE.

19. So far as the Sri Lankan government was concerned, Dr Smith said that its strategy remained to emasculate the LTTE and prevent its recrudescence. The east remained on high security alert. In the north the 250,000 or so IDPs currently in camps in and around Vavuniya were being screened to identify any LTTE supporters and potential infiltration from "fifth columns". His estimate was that some 12,000 captured or surrendered LTTE were detained in separate camps and their future was uncertain. The army planned to increase its numbers from 200,000 to 300,000 to protect against an LTTE revival, based upon a perceived risk of LTTE members overseas returning to resurrect the movement under a new leadership. In Colombo "efforts to identify LTTE underground cells are ongoing"; security was tight and many checkpoints and "High Security Zones" remained in place. The Sri Lankan Parliament continues to vote to extend the state of emergency laws monthly.

20. Despite statements from government leaders talking about giving Tamils in the north and east limited autonomy, Dr Smith considered that the Sinhalese political elite seemed set on an exclusionary policy of triumphalist nationalism, increasingly based on powerful families and political Buddhist clergy. Conflict in Sri Lanka had generally been accompanied by human rights abuses which had drawn increasing condemnation from the international community.

21. According to Dr Smith all these factors had "massive implications" for a person from the north who was in Colombo as a returned asylum seeker. An intense focus upon Tamils in Colombo through cordon and search operations and checkpoints was likely to continue:

> "When stopped, Tamils are required to provide a valid reason for being in Colombo, which was generally assumed to be a verifiable business concern, home address, property interest, employment, seeking medical help or travelling abroad. Anybody of Tamil ethnicity who fails to meet one of these requirements is considered a potential LTTE sympathiser."

22. In his opinion, the situation in Colombo was unlikely to improve for some time. The defeat of the LTTE in the north would make the security forces even more concerned about the risk of suicide bombing especially in Colombo designed as revenge for

events in the north: “This means”, he wrote, “that conditions for a returning Tamil from the north, in Colombo, are exceedingly poor at present and almost certain to get worse”.

23. Dr Smith considered, as a result of interviews he had conducted with a retired senior military officer in September 2008 (General (retd) Lionel Bagatelle), that the government’s record-keeping had become increasingly systematic and centralised through the work of the Military Intelligence Corps. Such records “varied in their length and detail, depending upon the level of adverse interest. All records included information on family members”. Every suspect detained by the security forces resulted in a record being raised. The Criminal Investigations Department (CID) and Security Intelligence Services (SIS) were engaged in a comprehensive exchange of information. Once details of a detainee had been entered on to the database, “they remain there for life”. Even if the detainee were released from detention without charge, “‘the system’ will still identify them on return…”

24. As regards procedures at Colombo Airport, the arrivals section was completely modernised in 2005 and Dr Smith's recent experience suggested that the security systems had been upgraded. The Department of Immigration and Emigration (DIE) had a computerised registration system and the SIS database was linked to it, although the CID and SIS no longer seemed to share information. The authorities at the airport had available to them a centralised electronic database and had been instructed “to closely monitor and report the details of the people who are entering and leaving the country”.

25. So far as these systems would impact on the appellant, Dr Smith was confident that, as she had been previously detained in Colombo in 2006, her detention and the adverse interest of the security forces in her then would have resulted in her relevant details having been recorded and transferred to the centralised, electronic database available to the authorities at the airport in Colombo. Since the authorities had recently recognised the need for increased vigilance at the airport, “principally to prevent the return of LTTE sympathisers, supporters and cadres”, the appellant was likely to appear on the database as a person of adverse interest and would likely be detained. If she were detained, it was likely she would be at risk of being ill-treated again.

26. Dr Smith acknowledged that the situation in Jaffna had improved significantly, but nevertheless, the humanitarian community considered the Jaffna peninsula to be an “open prison” and Jaffna a “garrison town”. Moreover, in Jaffna, as elsewhere, this appellant would be subject to security checks and her name would come up on the computerised database that would be used. In any event, she would need to secure permission from the Ministry of Defence to travel to Jaffna and would face lengthy security checks, both on departure and en route. It was unlikely she would be allowed to go to Kilinochchi as most of the inhabitants were in the IDP camps, and there was a very heavy military presence: “… she would clearly stand out and be questioned and most certainly detained, with the real possibility of intense interrogation”.

Dr Smith: oral evidence

27. Leaving out Dr Smith's reiteration of matters covered in his report, his evidence was in summary as follows. His background was in security and defence. Formerly an academic, he now worked as a consultant. He referred to the Criminal Records Form document that he had submitted to the Tribunal. It had been given to him 9-12 months ago, but was likely, he considered, to be similar to one completed by the CID at the airport. He had been told it was to be introduced soon, so he expected it was now in use. The difference from previous forms was that it was more comprehensive and designed for computer entry of the information entered on it. It was impossible to say unequivocally that the appellant would be detained at the airport, but her ID card showing a Kilinochchi residence and her previous detention on suspicion of being a "Black Tiger" (suicide bomber) made that very likely. He did not consider that the end of the war meant security levels had decreased. There was residual concern about LTTE remnants and about LTTE cadres coming back into the country. The authorities would not be flexible towards enforced returnees. There was concern about persons who originated from the conflict zone.

28. In cross-examination, Dr Smith said his assessment of government databases at the airport was based on interviews he had conducted in Colombo. He said he broadly accepted that if the appellant was not on a database accessible at the airport, she would not appear on a database at any checkpoint either and would not be detained. Risk at the airport was the dominant risk. He accepted that almost all his evidence predated the end of the war and that much of his assessment of the position now was expressed in tentative language, but he believed it to be certain that the authorities feared that there were LTTE cadres still in Colombo. Asked about the website known as TamilNet, he said it made an effort to be comprehensive, but it was very much reliant on ad hoc sources. It was extraordinarily difficult for anyone outside the security services to know whether failed asylum-seeker returnees were detained at the airport; he could not say whether, if such detentions occurred, reports of them would end up on TamilNet. He did not himself believe that the LTTE had been completely eliminated.

29. The government had developed ways of identifying Tamils of concern to them. In cordon and search operations carried out in Colombo the majority of people were released relatively quickly, but those who had no reasonable reason to be in the city would inevitably be of adverse interest. The longer the detention, the more likely the ill-treatment. Even for a Tamil who had gone to Colombo to flee the LTTE, the authorities might not see it that way.

30. Dr Smith said he was not meaning to say that the DIE and other officials at the airport would have open access to a centralised computerised database; only that the "system" in place at the airport would cause a check with such a database: the Immigration Officer was a filter; he or she handed suspects on to the CID or SIS. It was important in the appellant's case that she had left Sri Lanka illegally; that would be discovered on return and the authorities would want to question her. If a person had been released from detention in Colombo because of influence, the record would not necessarily show that; nobody could tell; all that was certain was that the record would not disclose any bribe. He accepted that very large numbers of failed asylum seekers would be seen by the authorities in Sri Lanka as having been economic migrants and would be of no interest to them at all. But there would be some who were of adverse interest. "We do not have hard information… much more work is

needed on this". He was not aware that the Sri Lankan Guardian was a problematic source.

31. In re-examination, Dr Smith emphasised that in recent times there had been a lot of deliberate misinformation put out by both parties to the conflict; the evidence regarding the article in the Sri Lanka Guardian was inconclusive. Tamil men were more likely than Tamil women to be of adverse interest to the authorities, but not by much. The evidence showing that the authorities ill-treated people in detention was legion. Even initial vigorous interrogation could involve violence and abuse.

32. In answer to questions from the panel, Dr Smith said he had only spoken to a handful of Tamils who had been detained at checkpoints (one a year); in each case they happened to be English speakers. He agreed that the Criminal Record form exhibited by him contained no section to record previous detention, except as a result of conviction. Asked to clarify whether his position was that the authorities thought the LTTE cadres they sought would be "home grown" rather than coming from abroad, he said that the home grown cadres would be the "foot soldiers", but that higher profile ("officer") LTTE members were expected to return from abroad. He did not agree that as a result of military defeat of the LTTE the authorities would be less interested in sympathisers and supporters. He agreed that there were some indications to show the level of adverse interest in Tamils might be diminished, but they did not yet indicate any improvement in the area of security.

Professor Good: written reports

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33. From Professor Good we had two reports, the first dated 19 October 2009, the second, a supplementary report dated 25 October 2009. The first, stretching to some 137 pages is the longest country expert report this panel has ever seen. Such inordinate length places a quite unwarranted burden on the tribunal and the other parties, particularly where, as already noted, much of it deals at unnecessary length with evidence of events predating LP. Be that as it may, we must do our best to identify and take account of its relevant parts

34. Professor Good stated that the evidence strongly suggested that the identities of returned failed asylum seekers, as well as information on their prior activities, prior detention or previous offences and appearances on wanted lists, were likely to be on a central database and so, under certain circumstances, to be known to the authorities. Indeed, given the intense government interest currently in identifying LTTE sympathisers, "one might expect a greater degree of interest at present than hitherto". With the military defeat of the LTTE the government had more resources and attention available to devote to such investigations. Having routed the LTTE at home, the government was increasingly focusing on destroying the group's networks overseas.

35. According to Professor Good, the list of risk factors in LP "provides the best start point at present" though the relative importance of the factors listed might well have altered, e.g. through there being increased focus on the diaspora, making links with a known centre of LTTE activity, such as Toronto or London, of greater importance.

36. Were the appellant to come to the adverse interest of the authorities and be detained in an official way, this would most likely happen under the provision of the Prevention of Terrorism Act (POTA) and Emergency Regulations which violate international standards. "There continues", he wrote, "to be overwhelming evidence of the routine use of torture by the security forces against detainees with impunity". Police use of torture was also endemic. Professor Good cited the February 2009 US State Department report statement that:

> "[t]he government's respect for human rights declined as armed conflict escalated. The overwhelming majority of victims of human rights violation, such as killings and disappearances, were young male Tamils, while Tamils were only 16% of the overall population."

37. Professor Good also cited recent observations by the UN Special Rapporteur on Torture, Professor Manfred Nowak, detailing the army's indiscriminate targeting of Tamil civilians in the war. Professor Good identified many sources indicating that the security forces continue to enjoy effective impunity regarding human rights violations. In a later section of his report Professor Good chronicled various reports detailing the significant numbers of disappearances and abductions, often with Tamils as the victims, carried out either by government agents or paramilitary groups.

38. In Professor Good's opinion there had been a widespread incidence of rape as an aspect of, or in association with, the ethnic conflict.

39. In a subsection headed "Ill-treatment of returned failed asylum seekers" Professor Good referred to having been supplied with "four recent determinations [three of them by AIT judges] which accept that torture did in fact occur when failed asylum seekers were returned". He also referred to an ongoing deportation appeal by a Canada-based Tamil refugee previously deported in December 2005, a report in Hansard, 2 November 2006 (Column 598W), concerning the deaths of two individuals in Sri Lanka after they had been returned to Sri Lanka by the UK, and a report from a French NGO (Cette France-Là) concerning the killing in Sri Lanka of a returnee from France.

40. Since the military defeat of the LTTE there had been "heightened scrutiny of refugees and others arriving in Sri Lanka". In support of this proposition he referred to several items of evidence: a letter from the British High Commission (BHC) Colombo to UKBA, dated 22 January 2009, reporting on the arrival in Colombo of a charter flight, carrying the first group of failed asylum applicants deported to Sri Lanka under a new agreement between the UK and Sri Lanka governments; a TamilNet report of 7 June 2009 about the arrest of two Tamils from Mullaitivu after they had returned from abroad; a Sri Lankan Guardian report of 10 June 2009 regarding fifteen Tamils visiting from the UK who were said to have been taken into custody and held incommunicado for nearly two weeks to ascertain whether they had links to the LTTE; reference in the same source to a Tamil woman visitor having been held at the airport for three hours on suspicion of having participated in recent demonstrations in London and another visitor being asked to pay a bribe of Rs2,000,000; a report of 30 June 2009 in the Canadian newspaper, The Star, about a (non-Tamil) shadow Canadian foreign minister refused entry; a TamilNet report of 16 September 2009 about four Sri Lankans (three of them Tamils) remanded in custody on return from Fiji

for alleged connections with the LTTE; a report on the Global News website of 17 September 2009 on the detention of a Canadian citizen of Tamil ethnicity and the plight of four Canadians held in camps set up to house ex-combatants and war-displaced civilians; and a report of 6 October 2009 from the Australian newspaper The Age, and the Colombo Daily Mirror quoting a very senior Sri Lankan policeman (DIG Nimal Mediwaka) as saying that it is "normal procedure for any illegal asylum seeker deported back to the country to be arrested".

41. According to Professor Good, risk to returned asylum seekers would not be confined to the international airport. In mass round-ups of Tamils in Colombo, particular interest was shown in failed asylum applicants. Over the past two years, he wrote, the authorities had sought to persuade, or even to force, Tamils from the north or east to leave Colombo. Regarding checkpoints, since the end of the conflict the position appeared to be that they had remained at or even above wartime levels; although, following a Supreme Court ruling, checkpoints were now mobile. There was and would continue to be significantly greater suspicion of Tamils, particularly those unable to speak Sinhalese or whose accounts or documentation showed them to come from areas in the north or east, or who were associated with the LTTE. He cited a BBC report of 15 October 2008 quoting a minister in the Sri Lankan government as saying that anybody carrying identity cards with addresses from rebel-held areas was immediately arrested. All Tamils coming to Colombo were required to register with the police.

42. Could the appellant internally relocate to the north in safety? Professor Good was adamant that she could not because she would easily be apprehended by the authorities; in Sinhalese areas she would be conspicuous; to get to Tamil areas would involve passage through numerous checkpoints. Virtually the entire population of the Vanni was in detention camps. The very fact that the appellant was seen as someone from Kilinochchi trying to get to Jaffna would only increase suspicion and make checks on her past history very likely. In Jaffna, High Security Zones were still in place and Jaffna had been described by humanitarian agencies as a garrison town. Whether she went to Jaffna or the east, the appellant would also face the practical problems of being stigmatised as an unmarried single mother.

43. Professor Good drew attention to the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka ("the April 2009 Guidelines)" and the July 2009 Note on the applicability of the 2009 Sri Lankan guidelines ("the July 2009 Note"), both of which identified Tamils from the north and the east as at risk of human rights violations in all other parts of Sri Lanka.

44. In a section dealing with the approximately 250,000 or more Tamils held in 41 government camps in the north, Professor Good highlighted the continuing occurrence of abduction of children by paramilitary groups, reports of the escape of some 20,000 IDPs (believed to be LTTE cadres) and growing international concern about harsh conditions in these de facto detention camps.

45. His report also dealt with risk to the relatives of LTTE members; the possible risk of the appellant's child being separated from her if she were detained for any length of time; and with long term risk, viewed in the context of the past three decades of Sri Lankan history. He considered that despite conciliatory noises, the governing

Sinhalese elite would continue to attempt to marginalise the Tamil minority, thus sowing the seeds for further ethnic conflict. Extrajudicial activities by pro-government paramilitaries were likely to increase in scope. He concluded:

> "It seems clear that the government's interest in uncovering all those who have 'links with the LTTE' [a reference to a statement by Prime Minister Wickramanayaka in July 2009] will continue into the foreseeable future under any circumstances. That interest would be further intensified and prolonged if, as I believe is quite likely, the LTTE or some successor organisation acquires the capacity to carry out sporadic acts of violence or terrorism."

46. Professor Good noted that the FCO Travel Advice for Sri Lanka, as updated on 14 October 2009, recognised the possibility of detention on the basis of Tamil ethnicity.

47. As regards the appellant's status as a rape victim and a single mother, both of these would cause disownment by her family and social ostracism. In a city like Colombo, in addition to any risk she would face as a Tamil from the north, the main problem she would face would be sexual vulnerability. Lack of childcare facilities would make it very difficult for her to find work. Her stigmatisation would damage her daughter's marriage prospects.

48. The supplementary report from Professor Good dated 25 October 2009 commented on a Foreign and Commonwealth Office report produced by the respondent shortly before the hearing entitled Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009 (hereafter "the August 2009 FCO Report": see below, paras 84-87), giving broad approval to its methodology, although noting that contrary to the Report's assertion that it made no attempt to provide analysis, it inevitably involved a degree of selectivity. He also noted a clear tendency for the official spokespersons to "play down" the difficulties faced by Tamils and for representatives of NGOs and human rights bodies to draw attention to them. The Report did not in his view provide "coherent evidence as to what is 'really' happening [in Sri Lanka] at present".

49. His supplementary report also commented on the collated figures of detentions and abductions of Tamils in Colombo for July-September 2009 produced by the respondent. Whilst accepting that TamilNet reports were of value, Professor Good emphasised that the website was not omniscient and could not form the basis of any kind of statistical analysis.

Professor Good's oral evidence

50. In his oral evidence, Professor Good said that there was no evidence that the degree of scrutiny of returnees exercised by the Sri Lankan authorities was lessening. Evidence was not presenting itself in a coherent way at this stage. That the government saw an increasing need to identify anyone with LTTE connections was demonstrated by their mass detentions of so many people in the north currently. Although in his main report he had referred to the Sri Lankan Guardian as pro-government; having investigated further, he would now say it was independent. There were fabricated stories and reports put out by both sides. TamilNet was likely to report most incidents affecting Tamils, but it was unlikely to know about individual experiences at checkpoints. He had not been able to discover any report about

fifteen UK visitors said to have been arrested on return in June other than that in the Sri Lanka Guardian.

51. Professor Good agreed that whilst he was qualified to talk about the situation in the country generally, the way the Sri Lankan authorities dealt with and kept security records and exchanged information was not his area of expertise. His expertise was not better than the raw material he had set out in his reports. He could not say whether the fact that there were still many checkpoints in Colombo and elsewhere meant that a lot of people were being stopped, but he presumed the checkpoints were maintained for a reason. He agreed that recent evidence did not show many Tamils were detained at these checkpoints. He agreed that much of the evidence in his main report pre-dated the end of the conflict, but the reality was that there was little evidence to hand about the post-conflict situation. He maintained his belief that the authorities kept a centralised computerised database which had been progressively improved. With the levels of terrorism which they had experienced, the Sri Lankan authorities had reason to store records and check individuals. The evidence set out in his reports led him to believe that the authorities were able to establish the identities of people at checkpoints, even if they were not on Watched or Wanted lists. His guess was that it was more likely that a police detention would find its way on to a computer database than an army detention; paramilitary detentions would be less likely even than that to be in the computer database.

52. Professor Good was asked about his statement in his main report that the appellant was likely, if detained, to be held under Prevention of Terrorism Act (POTA) powers. Mr Staker for the Respondent pointed out that at present there were only 1,200 persons held in this way in the whole of Sri Lanka. Professor Good was asked whether POTA detention was likely in the appellant's case: he said that it depended on what the authorities believed about her. There was no evidence, he maintained, that torture was any less likely just because the war had ended The culture of impunity seemed no better post-conflict. If a Tamil from the north were returned to Vavuniya today he or she might end up in a detention or rehabilitation camp. In the north, the appellant would not excite interest just because she was in Jaffna or other places in the north. He was not aware of any significant incidents of intercommunal violence since the end of the conflict, but unmet grievances against the Sinhalese majority could lead to renewed violence.

53. In re-examination, Professor Good reiterated his opinion that the appellant would not be allowed to travel to the north. He thought it was significant that in the north some people in detention camps who had been released after being screened had been re-arrested; that was evidence of continuing adverse interest in those connected with the LTTE. There were recent sources indicating rape in detention still occurred. It must be recalled that because of the stigma there would not be a high incidence of reporting of such rape. Either in Colombo or Jaffna the appellant would be quite vulnerable. If a woman were detained, she was likely to be sexually abused.

54. In answer to questions from the panel, Professor Good said there was no evidence that the level of official scrutiny of Tamils from the north had relaxed. The authorities might now have better intelligence about those with LTTE connections, but they had made clear that they were continuing to look for such people. He could not say if the authorities in Colombo had recently changed from their previous position of

pressurising Tamils from the north to leave whilst the detention camps in the north were full. If the appellant were genuinely suspected of being a suicide bomber in the past, she would be regarded as high-profile. He reiterated his opinion that the numbers of paramilitaries were likely to increase notwithstanding plans to expand the size of the army; the government needed such people for their close knowledge of the Tamil community.

The Evidence of Mr D Becker

55. The only other oral evidence was from Mr Becker, a Higher Executive Officer of the UKBA. He spoke to his witness statement of 13 October 2009 concerning collation by him of data on returns to Sri Lanka under the UKBA Assisted Voluntary Return (AVR) programmes and his information gathering on the assistance the International Organisation for Migration (IOM) provides to voluntary and enforced returnees to Sri Lanka. His statement explained that there are currently three main AVR programmes: the Voluntary Assisted Return and Reintegration Programme (VARPP) for asylum seekers; the Assisted Voluntary Return of Irregular Migrants (AVRIM) scheme and the Facilitated Return Scheme (FRS) for foreign national prisoners.

**Background Evidence**

56. In LP the Tribunal looked at a considerable volume of available background country information and reports up to early April 2007: these were set out in an appendix. Already in LP the evidence was that the formal peace process was beginning to break down. In some parts of the country there was fighting and the security concerns In Colombo and elsewhere were increasing. In AN and SS, heard in mid-February 2008, the Tribunal noted the formal end of the ceasefire and heightened security in Colombo.

57. In NA in mid-2008, the ECtHR not only reviewed the information and guidance given in LP but conducted its own fact-finding so as to ensure it could reach an ex nunc assessment of risk (para 112). It noted that particularly since the formal end to the cease-fire between the Sri Lankan authorities and the LTTE, there had been a deterioration in the security situation in Sri Lanka (para 124). Having examined closely further information to hand concerning developments in Sri Lanka since LP, the Court concluded there was nothing in that information which would require it to reach a different conclusion of its own motion (para 125). Since these three cases, of course, there have been the dramatic changes we have already alluded to. However, their relatively recent nature (the military defeat of the LTTE only having been accomplished in May 2009) means that there is comparatively little evidence to hand about the post-conflict situation and even less evidence regarding the current approach of the Sri Lankan authorities to enforced returnees from abroad. Nevertheless, the principal country reports and other sources that have become available since NA do cast some light on the changing circumstances leading up to the events in April 2009 and thereafter. Since they have been drawn on by the two experts in their own reports, we do not need (save in respect of three) to elaborate on them separately. Among them are: the Home Office COIS report on Sri Lanka for June 2009; the COIS Bulletin on Sri Lanka, 13 October 2009; the US State Department report for 2008, published in February 2009; the Human Rights Watch report, “Sri Lanka: Tigers under the bed”, 18 June 2009; the Amnesty International

report, “Sri Lanka: Twenty years of make believe”, 11 June 2009; the UNHCR Eligibility Guidelines, April 2009 and the UNHCR Note of July 2009; the August 2009 FCO report, the FCO Country profile on Sri Lanka, updated 14 October 2009 and the final report prepared for the European Commission by three independent experts, “The Implementation of certain Human Rights Conventions in Sri Lanka”, Final Report, 30 September 2009 (the “GSP Plus report”).

58. The picture that emerges from these and other reports is fairly clear. The 26 year war between the Sri Lanka Government and the LTTE ended in May 2009. During its course some 70,000 – 100,000 people were killed and another one million displaced. The final stages of the military conflict were characterised by serious violations of international humanitarian law committed by both sides. Despite promises by the President to reunite the country through a political package that would devolve power to Tamil people, the government continues to operate under a state of emergency, the security and human rights situation remains challenging. In the north over 250,000 people were being held (at least until very recently) in conditions described by UN officials as akin to internment. Some who had been released were re-arrested after release. Living conditions in the camps are poor. In the light of the recent GSP Plus report, it is unclear whether the EU will continue to allow Sri Lanka duty-free access to its markets, although capital investment in the country by China and India is increasing and it may be that the country has already fallen into their sphere of influence.

59. So far as the general security situation is concerned, it is clear that the government is intent on maintaining security at high levels. However, post-conflict, there are some signs of a relaxation in the intensity of checks at checkpoints, a reduction in the number and level of cordon and search operations in Colombo and accompanying arrests and in the number of abductions and disappearances. There are no recent reports of any significant incidents of intercommunal violence. The government has made numerous statements expressing its concern about LTTE remnants and its intent to track down remaining LTTE cadres. It has also expressed its resolve to dismantle the LTTE’s overseas procurement network. At the same time, it has also made a number of statements in broader terms expressing its intention to pursue all those with links to the LTTE.

60. As both experts acknowledge, in all the copious materials before us, there is no firm post-conflict evidence as to the likely treatment of returnees. Both parties have therefore sought to highlight the state of the evidence concerning three matters seen as having particular value in helping evaluate this issue: the nature of the records used or consulted by the Sri Lanka authorities at Colombo international airport; the procedures employed by the Sri Lankan authorities at the airport in respect of failed asylum seekers/enforced returnees; and recent incidents of returnees who have met with difficulties. It is convenient if we deal with the evidence concerning these (as well as some other specific items of evidence) when giving our assessment.

Submissions

61. We mean no disrespect to the parties by choosing to summarise their submissions only briefly; indeed we are grateful for the considerable care both took to address all

relevant issues; however we find it convenient to deal with the salient points each raised when we come to them below.

62. Mr Chelvan's submissions were broadly to the effect that the country guidance in LP stood in need of some revision, in particular so as to identify Tamils from the north and east, especially those from the Vanni or former conflict areas, as either a risk category or a separate risk factor. We should, he said, consider that for persons in this category the level of risk had increased since LP and NA were decided. With the military defeat of the LTTE, the authorities were now more able to devote resources to identifying those with links to the LTTE. We should follow the opinion of the two experts that failed asylum seekers would face a real risk of arrest and detention at the airport, certainly if the authorities had a record relating to them giving details of any previous arrest or detention.

63. In relation to the appellant's case, he emphasised that it was not in dispute that she had suffered serious past persecution due to the suspicion of the Sri Lankan authorities that she was a suicide bomber. He urged us to find that she would be at risk in her home area of Kilinochchi and would not have a viable internal relocation alternative, first because she would be at risk of arrest and detention and ill treatment at the airport or subsequent checkpoints, secondly because in her particular circumstances as a young Tamil woman who is now a single parent, sexually vulnerable, and without any network of family support, life for her in Colombo would be unduly harsh and it would not be reasonable to expect her to relocate there or indeed to any other part of Sri Lanka.

64. Mr Staker's submissions argued that we should not depart from the premise of previous case law, which was that risk of persecution or ill treatment only arose for those whom the Sri Lanka authorities suspected of involvement with the LTTE at a sufficiently high level. We should find that the risk factors in LP continued to be valid. He asked us to focus on the issue of risk to the appellant at the point of return at Colombo airport and thereafter at checkpoints. He contended that the evidence concerning arrests and detention at the airport adduced on behalf of the appellant did not withstand examination. As regards the appellant, we should find that the authorities were unlikely to have a record on her and that she would not come to their adverse attention, lacking as she did any LTTE profile. Her circumstances as a young Tamil from the north with a young child would not cause life for her in Colombo to be unduly difficult, nor would relocation to Jaffna or other parts of Sri Lanka.

**Our assessment: general issues**

65. We have already identified the principal country guidance issue we intend to decide in this case: whether (since LP) Tamils who face enforced removal from the UK, particularly Tamils from the north or east of Sri Lanka, currently face a real risk on return of adverse treatment at the hands of the Sri Lankan authorities. That means that we do not seek to address the issue of risk from the LTTE, which was last dealt with in AN & SS. However, we think it relatively clear that in the light of the military defeat of the LTTE, it is unlikely that this head of risk will play much part in most Sri Lankan asylum-related appeals for the immediate future at least. Our decision is not - any more than was the Tribunal's in LP or the ECtHR's in NA - intended to cover all categories of persons who might face difficulties on return to Sri Lanka. Despite Mr

Chelvan's late exhortations, we do not cover, for example, possible risk to journalists or NGOs. Certain preliminary observations about some of the evidence are in order.

The evidence of Dr Smith and Professor Good

66. Reports submitted by Dr Smith and Professor Good were considered in depth by the Tribunal in LP and in AN & SS. The Tribunal's response in both cases can be summarised as follows: considerable weight was seen to attach to their reports insofar as they afforded a digest of a great body of relevant evidence. On some matters their own evaluation of that evidence was also accorded considerable weight, on others less so. We take much the same view of the reports they have prepared for this case. What, however, seems clearer now from their reports before us is that in relation to the factual background to the core issues we have to decide – in particular risks to Tamil returnees at the airport and other checkpoints, especially those said to arise from the existence of specific records of previous detentions – both experts acknowledged that they had little or no distinct expertise. Professor Good is a social anthropologist who said such security-related issues were not his area of expertise. Dr Smith, whose expertise was in this area, acknowledged that in relation to the situation post-conflict his evaluation was based largely on inferences from the background items of evidence he had collated in his report, coupled with his past research based on interviews with various Sri Lankan officials and others in Sri Lanka in 2008 and earlier dates. His interviews with various Sri Lankan officials were a valuable source of information, but did not prevent him from acknowledging that as to what the situation was since May 2009 "[w]e do not have hard information… much more work is needed on this". In relation to his interviews of those who had experienced problems at checkpoints, it transpired that they concerned a very small number (one a year) and were confined to those who spoke English.

67. Mr Chelvan sought to argue that just because an expert's report consisted in opinion not based wholly on available evidence this did not reduce its weight: he cited in support FK (Kenya) [2008] EWCA Civ 119. Very much the same argument was adduced by Counsel in AN & SS (Mr A McKenzie) and in our view should be rejected for very much the same reasons SIJ McKee gave in that case at para 102:

> "…while we do not disagree with the proposition that an expert is entitled to form an opinion based on his experience and expertise, without necessarily having a panoply of 'objective facts' to back up that opinion, we think that the weight to be given to the opinion even of a distinguished expert will diminish in inverse proportion to the amount of observable facts which he can marshal in support of his opinion. Sedley LJ's analysis in FK (Kenya) was not, in our view intended to give approval to experts not sourcing their reports, but to warn against disregarding the expertise of a report's author when assessing the value of his report".

68. We do not wish to discourage experts from providing reports dealing where relevant with issues of risk on return to a country's airport or at subsequent checkpoints; indeed we continue to think that on such matters the Tribunal needs all the help it can get. But we do expect clearer demarcation by them as between parts of their reports where they have expertise and parts where they do not.

The UNHCR evidence

69. We need shortly to discuss the most recent UNHCR position on asylum-related cases involving Tamils from the north and east, but would clarify here that in relation to the approach of the Tribunal to UNHCR evidence in respect of Sri Lanka, we continue to take the same view as the Tribunal did in LP (para 203) and the ECtHR did in NA (at para 127), namely that "substantive weight" should be accorded it, albeit the views expressed by UNHCR cannot be decisive in the Tribunal's or the Court's assessment of risk to Tamils returning to Sri Lanka. Although we have a UNHCR July 2009 Note post-dating the end of the conflict, we note that it largely relies on and reiterates the evidence from its April 2009 Guidelines. UNHCR has a significant number of personnel on the ground in various parts of Sri Lanka; however, so far as procedures at the airport was concerned, their Protection Officer in Colombo said to the authors of the August 2009 FCO report that UNHCR had little involvement with this type of issue.

The British High Commission (BHC), Colombo evidence

70. In view of certain criticisms made by Mr Chelvan of the BHC, Colombo evidence in this case, we need to make a specific comment on it. In LP the Tribunal had to consider five letters from the BHC going back 18 months. Agreeing with Buxton LJ in AH, IG & NM (Sudan) [2007] EWCA Civ 297 that it was appropriate for the Secretary of State to seek to adduce evidence from diplomatic and consular channels in country guidance cases, the Tribunal considered that the BHC, Colombo letters should be given equal value to that of a well-informed, balanced country expert who provided sources and evidence of his or her expertise: see para 205. It is true that in NA the Court did not accept some aspects of the BHC, Colombo evidence relating to the use of computer technology by the authorities at Colombo airport (see para 136); however, at para 121 they echoed the Tribunal's general view in LP, noting that "through their diplomatic missions and their ability to gather information, [States] will often be able to provide material which may be highly relevant to the Court's assessment of the case before it" (para 121); and elsewhere other aspects of the BHC evidence were accepted. We consider that when assessing the more recent BHC, Colombo letters produced to us we should adopt the same approach: they are a source to which we attach value but which have to be considered on their merits.

The Sri Lankan government and the LTTE

71. Having given some preliminary observations regarding some of the evidence we turn to assessment of the general situation. It is too early to tell whether the LTTE will re-emerge as an organisation intent on continuing insurgency against the Sri Lankan authorities, albeit there is broad agreement that it would take years for it to become again a conventional military force. For its part, the Sri Lankan government has adopted a policy of trying to drive home its military victory by weeding out LTTE remnants. The most graphic illustration of this new policy was provided by the screening procedures conducted amongst the 250,000 or more people or more held (until very recently) in camps in the north as a result of displacement and/or capture during the final stages of the war. In the course of flushing the LTTE out of its traditional strongholds the Sri Lankan authorities have gathered considerable intelligence about the LTTE membership and support structures. Outside the north there is evidence that persons who are seen to have actively assisted the LTTE, e.g. with fund-raising, are being pursued with a view to prosecution.

72. There is also a certain amount of government talk about pursuing all those who have links with the LTTE. Putting that talk beside the fact that in a broad sense almost the entire population of the north could be said to be perceived as having links with the LTTE, both Dr Smith and Professor Good consider that there is currently a real risk of adverse interest from the Sri Lankan authorities at Colombo international airport towards any Tamil originating from the north and the east of the country. They allude to the fact that UNHCR in its April 2009 Guidelines and its July 2009 Note identifies "Tamils from the north and east" as a distinct risk category deserving of international protection.

73. Whilst we consider that in many respects the reports from the two experts accurately reflect background country reports, e.g. in pointing out that it is predominantly Tamils from the north and east who have been the target for abductions, forced disappearances, cordon and search operations, and arrests and detentions at government checkpoints, we cannot agree with some of the specific inferences they draw from this evidence for a number of reasons. First, whilst we lack full evidence of the post-conflict situation in Sri Lanka, there is nothing to suggest that (outside the north of the country) the levels of adverse interest in Tamils from the north and east are any greater than they were in mid-2008 when the ECtHR decided the case of NA. That is significant because it was the Tribunal's assessment in LP, affirmed by the ECtHR, that Tamils as such, including Tamils from the north, were not at real risk of persecution or serious harm.

74. Secondly, the subjection (until very recently) of some 250,000 or more persons in the north to a process of screening to establish whether they are involved with the LTTE has been understandably the subject of strong criticism from international organisations. But (whether justified or unjustified) its raison d'être was plainly that those in the camps were persons who were physically present in or proximate to the areas where the LTTE were in control or where the Eelam IV fighting took place. As such, it is clear that the Sri Lankan authorities considered that their number would include LTTE fighters/cadres/operatives. We do not see any reason to view the treatment during the period May-late November 2009 of those in these camps as a template for how the authorities are treating or intend to treat Tamils in other parts of the north outside the camps or in Colombo in particular. As we explain further below, there is no documentary evidence to indicate that Tamils in Colombo are facing higher levels of adverse interest than was the case before the end of the conflict.

75. Thirdly, we are not persuaded that the Sri Lanka authorities would have as much interest as before in persons in some way linked to the LTTE unless they were LTTE members/cadres or persons with an active role or profile in that organisation. We note that in the period since the peace process began to break down, almost all of the security measures undertaken by the authorities were in response to LTTE armed actions, whether conventional military offences or guerrilla activities such as suicide bombings. Yet even in that context the assessment made by the ECtHR during this period was that it would still only be Tamils of sufficient level of interest to the authorities who would face a real risk of ill-treatment. With the eclipse of the LTTE as a conventional military force, and the decimation of its leadership, there is less to respond to. Dr Smith and Professor Good maintain that this development means that the authorities are now able to focus more of their efforts on those having links with

the LTTE in the broader sense, but (again) that is not borne out by any evidence showing that in Colombo the levels of adverse interest in Tamils (or Tamils from the north and east) has increased. In the absence of fuller evidence, our own assessment can only be tentative but if anything it seems to us likely that the authorities now have a lesser level of adverse interest in Tamils linked with the LTTE only in a broad sense, by, e.g. merely being from the north. During the conflict it was logical in security terms for the authorities to be concerned not just about LTTE cadres, but also about the sizeable number of persons who were considered likely to aid the LTTE cadres materially by, e.g. supplying them with petrol or food. Post-conflict, however, it is difficult to see why such persons would be as much of a concern.

76. So far as concerns the likely approach of the Sri Lankan authorities to returned failed asylum seekers, we consider therefore that their principal focus would be on 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.

Risk on return to a person whose home area is in the north or east

77. The Tribunal's decision in LP focused on the issue of risk on return in Colombo for a Tamil whose home area was in the north (see para 234). The ECtHR in NA adopted a similar approach (para 123) However, since the Tribunal's specific decision on whether LP was at risk in his home area as set out in para 228 of its determination was quashed by the Court of Appeal and remitted back for the Tribunal to consider and make findings as to the risks if any in his home area (Jaffna) (Appeal No.C5/2007/2328), its observations on risk in the home area cannot be taken as guidance. Given the current position in the north, with so many people still in camps (at least until very recently), we would not venture any firm generalisations. We do not think that for the generality of Tamils there will be a risk of serious harm from the Sri Lankan authorities in their home area; indeed, we note that neither expert suggested that this would be the case, even on the basis of the evidence as to the situation in the camps as it stood at the date of hearing. However, if a person's home area is a former conflict zone or is where (or near to where) camps are still currently located, the position is less clear. If they possess some individual risk characteristics, their position calls for a more nuanced assessment. Below we have felt able to make an assessment of risk to the appellant in her home area, but that is highly fact-specific and we do not think at this point in time, with the situation regarding the camps appearing to be so much in flux, any more precise guidance would be appropriate.

Risk on return at Colombo International Airport

78. As already indicated, there are three aspects of the issue of risk on return at the airport that require specific attention.

79. We turn first to the matter of records available to the authorities at the airport. In NA the ECtHR found that there is a greater risk of detention and interrogation at the airport than in Colombo City "since the authorities will have a greater control over the passage of persons through any airport than they will over the population at large".

Both parties were in broad agreement with that proposition and we consider it continues to have efficacy. In NA, having considered conflicting accounts put forward by the appellant and the UK Government as to the procedures followed at Colombo airport and the nature of the information technology there, the ECtHR concluded that:

> "...at the very least the Sri Lankan authorities have the technological means and procedures in place to identify at the airport failed asylum seekers and those who are wanted by the authorities. The court further finds that it is a logical inference that the rigour of the checks at the airport is capable of varying from time to time, depending on the security concerns of the authorities" (para 136).

80. As was the case before the ECtHR, so before us there was conflicting evidence on such procedures. The respondent adduced letters from the BHC in Colombo indicating that the CID at the airport scarcely seemed to use computers. Some of the sources interviewed by the authors of the August 2009 FCO report lent weight to that view. Dr Smith and Professor Good, by contrast, averred not only that all government officials at the airport relied on computer systems, but also that there was now in existence a centralised computer database to which all three – DIE officers, the CID and the SIS – had access. Like the ECtHR we do not find it necessary to decide on the precise nature of the record-keeping systems in use. On the one hand, we think significant weight should be attached to the BHC's recent evidence that the DIE's is an immigration-specific database and that CID computers are not linked to any national database (see letter of 28/8/2008). We also agree with Mr Staker that it is implausible that the SIS and CID would be content for mere DIE officers to have unrestricted access to their file particulars, some of which would probably be highly sensitive. We gained little help from the forms adduced by Dr Smith as ones he thought might now be in use at the airport since they were Criminal Record forms and contained no place for an entry to be made of a detention other than one imposed as a result of a conviction. On the other hand, as noted by the ECtHR in NA, there is considerable evidence to suggest that thorough checks can be carried out on returnees. Whatever the precise position, it is sufficiently clear that returnees can be subject to direct or indirect checks utilising computer databases, which may alert the authorities to particulars which make them of specific interest.

81. Assuming records are held at the airport or can be checked from there, the more difficult question concerns who they will cover and whether in particular every arrest and detention by the Sri Lankan authorities results in a record being raised. In a much-repeated submission, Mr Chelvan insisted that the ECtHR in NA had already found that the Sri Lankan authorities would have a record of all past arrests and detentions. We are bound to say, we can discern no such finding in NA. When concluding that there was likely to have been an official record made of NA's six detentions, the Court carefully avoided making any findings on how complete records in general would be: see para 145. Further, it was the evidence of Mr Chelvan's own witness, Professor Good, that the likelihood of records being kept of detention depended in part on who had made the arrest/detention: his evidence was that a record of an army detention was less likely than one of a police detention.

82. A further question concerns the likely contents of these records. We are prepared to accept that in the past 10-20 years the Sri Lankan authorities may well have taken

steps to place more particulars relating to LTTE suspects on file and to transfer those onto computer databases. At the same time, it seems clear that such steps will have enabled them to indicate a clearer profiling of security risks. Significantly, Dr Smith's own evidence, drawn in part from interviews he had conducted in Sri Lanka as recently as 19 September 2008 (with General (retd) Lionel Bagatelle), was that data contained in official records pays close attention to detail and records and the levels of threat posed by the individual: "The records varied in their length and detail, depending upon the level of adverse interest" (para 103). At one point in his oral evidence he emphasised that "the government had developed ways of identifying Tamils of concern to them". He also said that all records included information on family members. In our judgment this is one of the most important items of evidence to have come to hand since LP and NA. It strongly suggests that the accuracy of date-recording has improved. In our view greater accuracy is likely to reduce substantially the risk that a person of no real interest to the authorities would be arrested or detained.

Procedures for returnees

83. The Tribunal in LP and in AN & SS and the Court in NA had considerable evidence as to the procedures employed at Colombo airport in respect of returnees, albeit nearly all of it was indirect. Whilst much of the evidence we had was of a similar nature and confirmed a similar picture, it is important to summarise its purport. The evidence provided by the BHC letters of 18 and 28 August 2008 was as follows. Some information regarding returned failed asylum seekers was likely to be notified in advance to the authorities in Sri Lanka by their High Commission officials in London, at least when they had been contacted to assist with issuing emergency travel documents. (Before issuing an emergency travel document, the High Commission would have details of an applicant confirmed against records held in Colombo and would thus satisfactorily confirm the holder's nationality and identity). In any event, on return such persons were likely to be asked questions. DIE officials were likely to record the arrival of these persons manually into a logbook; CID and SIS officers might also be involved. The CID kept records (including photographs) of persons arriving in Colombo, having been deported back to Colombo. In a letter dated 22 January 2009 an official of the BHC, Colombo described witnessing the return of thirteen Sri Lankan failed asylum seekers on 15 January 2009. He noted that the adult returnees were each interviewed by DIE officers for around 10-15 minutes, then for the same length of time by officers from SIS, who also took photographs of each returnee. The returnees were then taken down to the CID office where they went through virtually identical interviews, again taking some 15-20 minutes. The BHC officer said he saw no checking of returnees' details on any computer and there did not seem to be a "joined-up" approach between the three agencies. In a letter dated 26 October 2009 the BHC, Colombo said that an IOM spokesperson stated:

> "The procedures at the airport had increased in the recent past in the way they handle returnees, either voluntary or deported cases. This relates to carrying out identity check-ups, any previous criminal record etc and not related to violation of immigration procedures to our understanding. Immigration procedures are still very quick when it comes to our returnees. Even when it comes to State Intelligence Services (SIS) check-ups, they are flexible with our returnees too. We had only one UK voluntary returnees who was held for questioning by SIS recently. They were held for 6 hours

and 15 minutes. The reason we were told was that the returnee was kept waiting until the clearance was obtained from SIS headquarters and the local police station in Vavuniya, the returnee's final destination."

FCO report of August 2009

84. The most up-to-date evidence otherwise was that obtained by the respondent concerning the treatment of returnees as contained in the FCO report of August 2009 which sought information from a range of sources in Sri Lanka on, among other issues, the issue of "treatment of Tamils at Colombo Airport". According to the CID Superintendent at the airport, new procedures had been introduced from 5 August 2009 in relation to deportees. The DIE spokesman said that DIE recorded the details of all returnees in a register (logbook) before referring them to the CID (or sometimes the SIS) "without any harassment". DIE had access to an "alert" list relating to court orders, warrants of arrest, jumping bail, escaping from detention, as well as information from Interpol and the SIS computer system. A senior intelligence official was recorded as saying that the SIS was notified by the Sri Lanka High Commission in London about planned enforced returns from the UK and that the SIS interviewed every deportee and ascertained the grounds for their deportation. A CID Police Superintendent at the airport said that airline officers normally advised the DIE of returnees. DIE confirmed nationality and then passed the deportee to the SIS who checked to see if they had any links to the LTTE. [If so], the deportee would then come to the CID for questioning. This source also said that the CID now photographed and wet fingerprinted all deportees. Returnees were held while checks were being conducted in the person's area of origin. Persons suspected of being associated with the LTTE would be handed over to the Terrorist Investigations Department (TID). These procedures could take some hours, although not more than 24.

85. The Deputy Solicitor General said that if there was any suspicion or evidence of an involvement in terrorist activities, a suspect would be detained. A UNHCR Protection Officer, whilst stating that "UNHCR had little involvement with this type of issue", said that high-profile cases, such as those suspected of having involvement with the LTTE, would be taken away for further questioning. On the issue of whether Tamil returnees would be treated the same as other returnees, all the government sources and one or two government officials thought they would be, but the UNHCR Protection Officer thought that in general Tamils were more likely to be targeted for further questioning by the CID. A leader of one of the opposition parties (Mano Goneson, MP) said that Tamils were more vulnerable today than during the war as the government was out to destroy whatever was left of the LTTE. He spoke about four returnees who had gone missing the previous week (from Dubai, Kuwait, Canada and France).

86. The Swiss representative said that some returnees had been arrested; some only for a few hours, some for longer. He said that last year there were 9 cases of forced returns from Switzerland to Sri Lanka; some of them were questioned but many were not. Those most likely to be targeted were those suspected of long affiliation with the LTTE and those people who might be IDPs who had escaped from camps. "The usual suspects are young Tamils with ID cards from Jaffna, Vanni etc.". It was also stated that "females with a Vanni National Identity Card (NIC) may also be targets".

Professor Wijesinha from the government department with responsibility for protecting human rights in Sri Lanka was not aware of any detentions at the airport or of those returning even from well-known LTTE fund-raising hubs, being the subject of adverse attention.

87. The FCO report sources were in broad agreement on the question of police registration. To stay in Colombo one must register with the police and provide details of place and duration of stay. People must provide their ID card (NIC) and complete a form. If they did not have an NIC they could provide a letter from the Grama Seveka (local official); passports and emergency travel documents were acceptable. The IOM representative said that the system was aimed at identifying Tamils from the north and the east. Whilst some of the sources spoke of difficulties encountered by Tamils seeking to register (or to register for more than six months), none made any mention of any incidents of persons being arrested and detained in the course of registering, although it is noted that Tamils without identity documents were more generally likely to face problems in encounters with the police and army in Colombo.

88. We shall draw further on this report when dealing with risk factors.

89. It will be apparent that even amongst Sri Lankan government sources there is not complete agreement about airport procedures for returnees. Some of the BHC evidence is inconsistent. Some of the terms used by the report's informants are unclear. It may be, as Professor Good suggested in another context, that the word "arrest" could mean anything from a check to a formal apprehension: We do not know whether by "deportees" is meant in the main persons deported to Sri Lanka for criminal or immigration offences abroad or covers all enforced returnees, including failed asylum seekers as such. We have also to bear in mind that the Sri Lankan Government sources and the opposition MP, Mano Gonesan, may well not be objective. However, the picture that emerges is certainly not one of routine arrests and detentions of returnees and, apart from the opposition MP, none identify any significant occurrence of returnees per se meeting with adverse treatment. There appears to be routine questioning and failed asylum seekers appear to be subject to questioning from DIE, CID and SIS officers. Questions appear to cover the length of their absence, details of the routes by which they travelled abroad from Sri Lanka and, it seems, any links with the LTTE. There is no mention of any specific action taken against returnees found to have exited Sri Lanka illegally.

Incidents of adverse treatment at the airport on return

90. One of the main pieces of evidence on which Mr Chelvan relied was the section of Professor Good's report – a report, we emphasise, purportedly prepared specifically for the hearing before us in October 2009 - dealing with recorded cases of adverse treatment on return. We are bound to say this section is one of the least satisfactory parts of his report and leads us to doubt his expertise or credibility on this subject-area more than the Tribunal did in LP or AN & SS. At para 117 he states that he has learnt of "four recent determinations which accept that torture did in fact occur when failed asylum seekers were returned". The facts in those cases, he adds, "are crucial in forming my overall opinion in this matter". We must first of all query his use of the adjective "recent" since the first three determinations were dated March 2005, January 2005 and December 2006 respectively. LP, it is to be recalled, was decided

in December 2007. We are even more bemused that he should see the facts of these cases as "crucial" to his opinion on the issue of current risk of ill-treatment on return when the returns of failed asylum seekers relied on in these cases took place on dates even earlier – in 2002, 2003, 2004 and 2003 respectively. We were not supplied with copies of these determinations, but we would in any event not have seen ourselves as necessarily bound by the findings of fact made by the judges in them, particularly given that it may well have been (if they were failed asylum seekers) that they had not been found credible by judges in earlier appeals. In the first of these cases a witness statement from the appellant, Mr Vigithiran, was provided to the Tribunal in AN & SS, so that it has already been the subject of further Tribunal examination. Although the appellants in the second and third cases had clearly been approached by Professor Good to obtain their consent to their determination being referred to in this case, the appellant's representatives have not produced to us any written statement from them. We are quite unable to agree that these cases cast useful light on the position post-LP.

91. Professor Good also referred to the deportation appeal of a Canada-based Tamil refugee said to have been tortured after previously being deported to Sri Lanka in December 2005. Leaving aside the fact that the return in question was not recent, we note that this person's appeal was said to be still undetermined. Further, Professor Good's own account of the facts in that case was that the torture involved was not inflicted until some three years later when he was abducted or arrested in Colombo.

92. At para 129 Professor Good referred to "some instances" having been reported "in which returned failed asylum seekers have been killed in Sri Lanka". However, Professor Good did not dissent from the statement made by UK Home Office Minister Liam Byrne on 17 November 2006 (which he goes on to quote), clarifying that the deaths concerned took place some considerable time after the persons concerned had returned and passed through airport controls, without any evident relationship to either their prior asylum claims or subsequent returns. As regards the third case, based on a report by the French NGO Cette France-Là, it concerned someone forcibly returned to Sri Lanka on 30 August 2005 who was killed by soldiers in February 2007.

93. At para 135 Professor Good considered the relevance of the above evidence to the BHC Colombo letter of 22 January 2009 detailing the treatment on return of a group of failed asylum seekers from the UK. Whilst agreeing that this evidence confirmed what was already known, namely that most returnees pass through the airport successfully, Professor Good added several comments, one of which is as follows:

> "What the evidence reported in this section shows, equally clearly, is that even at the height of the ceasefire, not all returnees did so."

94. With respect, significant parts of the evidence in this section of his report were not about ill-treatment at the airport but about ill-treatment inflicted elsewhere considerably later, with no apparent causal connection, so he was not comparing like with like. And whilst we can agree that evidence of what happened at the height of the ceasefire casts some light on the post-conflict situation, his cases concerned events several years ago.

95. This section of his report nevertheless identified (at paras 137-144) some evidence relating to post-May 2009 incidents. We shall look at this later on when dealing with recent media reports, but we would express our bewilderment at Professor Good's statement a little further on about what he described in para 143 as "the most recent such report I have seen". It is that from the Australian Age (followed up in the Colombo Daily Mirror of 6 October 2009) in which a very senior Sri Lankan policeman (DIG Nimal Mediwaka) was quoted as saying that it was "normal procedure for any illegal asylum seeker deported back to the country to be arrested." At para 144 Professor Good stated:

> "This assertion goes beyond what was previously known, but has to be taken very seriously in view of the seniority of the officer involved".

96. Had we not heard oral evidence form Professor Good commenting further on this report, we would have understood the above words as any normal reader would – as indicating that it was evidence not to be dismissed lightly. In oral evidence, however, Professor Good made clear that he attached little credence to this report. Given that only a few paragraphs earlier in the same section of his report he himself had said that "it seems always to have been the case that most returnees pass through the airport successfully" (para 135), that qualification was perhaps not very surprising. This report was certainly part of the evidence relating to returns, but it turned out that on Professor Good's more precise assessment of its value was the opposite of that which might be derived by a careful reader of his written report. We have mentioned this matter in some detail because we are aware that Tribunals are sometimes invited to act on his written reports alone.

97. That brings us to the reports from TamilNet and other media regarding cases since May 2009 of returnees facing difficulties on return to Sri Lanka, some of which Professor Good did refer to in this section of his report, but which we can best deal with by going to the sources themselves.

Recent evidence concerning returnees

98. We are satisfied that in January 2009 the UK government removed thirteen failed asylum seekers on a charter flight to Colombo airport and that all passed through controls there without any particular difficulty. Not only was that the evidence of the BHC official who attended and witnessed the processing of these individuals, but there were no subsequent reports in the media about any of those who arrived on this flight meeting with difficulties. This is evidence about a return that took place prior to the end of the war and so it is not evidence about the new position. However, given that it took place relatively recently and at a time when armed conflict in the north was intense and there was great concern about LTTE bomb attacks in the capital, it does cast some light.

99. There are reports, mainly from TamilNet, of some post-May 2009 incidents affecting returnees. TamilNet reported that on 8 June two Tamils who had "returned from abroad" had been arrested in a house in Colombo. On 14 June two Tamil youths who had arrived from Qatar had been arrested as they were about to leave the airport in a vehicle.

100. Although not a TamilNet report, it is convenient to deal here with the controversial Sri Lankan Guardian report of 10 June 2009, cited by Professor Good at paragraph 139 of his main report, claiming that fifteen Tamils from the UK were taken into custody and held incommunicado for nearly two weeks to ascertain whether they had links to the LTTE. Professor Good stated in the same paragraph that this source also said that a Tamil woman was held for three hours at the airport on suspicion of having participated in a recent [anti-Sri Lankan government] demonstration in London. We shall have more to say about this source below.

101. There is a report in the appellant's bundle in which a spokesman for Hounslow Tamil Community Centre (TCC) claimed that the UK authorities had deported at least twelve Sri Lankans in July 2009. Neither Mr Chelvan nor the two experts sought to rely on this claim. In the absence of any corroboration, we attach no credence to it, particularly given the unequivocal statement made by Mr Saunders of UKBA that removals of enforced returnees were suspended in May 2009. (Even if the TCC claim were accepted as true, we observe that there have been no reports in the Sri Lankan press of any returnees from the UK in that month meeting with problems.)

102. A TamilNet report related that on 17 July a Tamil youth arriving from Dubai was arrested at the airport and taken into custody; the authorities said he had photographs of LTTE leader V. Pirababum and other LTTE documents. Another TamilNet report states that on 29 July a Tamil youth was arrested by the National Intelligence Bureau of the Sri Lankan police on his arrival from South Africa. He had been arrested by the South African authorities and detained there for the last two years; he had been escorted on the flight by a South African official who handed him over to the DIE officials.

103. We have already noted that the August 2009 FCO report refers to Mano Ganesan, leader of an opposition party saying in late August that he had heard of 4 persons who had gone missing at the airport the previous week after having arrived from Dubai, Kuwait, Canada and France respectively; he said that one of the 2 persons returned from the Middle East was currently detained by the TID. However, this is not corroborated by any other source and Mr Chelvan did not seek to rely on it.

104. On 16 September TamilNet reported that magistrates had further remanded in custody four persons, three of them Tamil, who had been arrested by CID officials at the airport on their return from Fiji for their alleged connections with the LTTE.

105. A TamilNet report of 19 October mentioned an incident on the 17 October involving eleven Tamil youths who had just travelled to Singapore but who had been refused entry there; they were said to have been arrested and detained on return by the State Intelligence Unit of the Sri Lankan police.

106. We find it difficult to draw any clear inferences from these items of evidence. We have already explained why we attach no weight to the TCC report and the claim made by opposition MP, Mano Ganesan, concerning several returns in early August 2009. The TamilNet reports, which accounts for most of those we have, are in a different category: albeit most are not corroborated by other sources produced to us, that may well be because they are recent. Over the past few years major country

reports have treated TamilNet reports seriously. It was common ground between the parties that TamailNet is a source that seeks to report everything it hears about. But even accepting as we do that its reports ( whether or not accurate) broadly cover most reported incidents in which Tamils have met with significant difficulties in Sri Lanka, they do not tell us much about overall patterns or trends. Some appear to concern returnees who have met with difficulty because they had committed or were suspected of having committed crimes abroad. In several cases it would appear that the person concerned may well have had strong LTTE connections. We take into account, of course, that the Sri Lankan authorities may allege such connections untruthfully, but on the face of the reports, we cannot discount that in those cases those arrested were persons of a certain profile. Overall there is a dearth of evidence indicating that since the end of the conflict returning Tamils with no such profile are experiencing adverse treatment at the hands of the authorities

107. What is most interesting is that in several instances the reports appear to have come to the attention of TamilNet because there had been complaints (both to the police and human rights bodies) made by the relatives of those concerned. This tends to confirm, in our view, that when Tamils return to Colombo from abroad they make known beforehand the details of their impending arrival and relatives and/or friends or others, normally go to meet them and are thus able to learn if anything untoward happens to them and report it if it does. Although the dearth of evidence referred to above cannot be regarded as decisive, it is of some significance, particularly given that, as we have noted, over the past year the eyes of the world, of international organisations and of NGOs have been on Sri Lanka.

108. As regards the Sri Lanka Guardian report of 10 June 2008, we do not attach any weight to it. It is not corroborated by any other source. It was the subject of a specific inquiry by the respondent of BHC in Colombo who replied in an e-mail dated 26 October 2009 that despite “extensive enquiries” they were unable to substantiate the story. Their Airport Liaison Officer (ALO) who was said to spend “a great deal of time at the airport” knew nothing of it. Mr Chelvan points out that this e-mail went on to doubt the alleged original source of the report, in terms that were quite inaccurate. Even accepting that to be correct, it does not alter our view that the contents of the report is unreliable.

Home Office statistics

109. We noted earlier the written and oral evidence of Mr Becker of the UKBA. The data he presented covered the total number of assisted voluntary returns under VARPP and AVRIM. VARPP is a scheme begun in 2002 for asylum seekers currently within the asylum process and those granted leave to remain on the basis of their asylum claim. Such persons are given tailored reintegration assistance as well as a £500 relocation grant and, where required, provision of short-term accommodation and child care fees. The data supplied is of limited assistance because it groups together VARPP and AVRIM returnees except for the period for 1 July – 30 September 2008**,** during which period there were 23 VARPP and 9 AVRIM returnees. Mr Becker’s statement also recorded what the UKBA Returns Liaison Unit had to say about assistance provided by IOM to enforced returnees to Sri Lanka. They explained that since 2006 IOM agreed with the UK authorities and the Government of Sri Lanka to document uncooperative failed asylum seekers:

> "IOM agreed to provide a travel assistance grant through its office in Colombo to enforced returnees. It was then agreed to reimburse IOM a sum equivalent to cover onward transportation costs by bus to anywhere in Sri Lanka, including overnight accommodation where it was necessary as part of the journey."

110. Mr Becker also provided data on the number of assisted enforced returns for 2006 (4), 2007 (4) and 2008 (4). For 2009 there were 21, including the 13 persons returned on the 15 January 2009 flight. The Colombo-based Migration Delivery Officer is cited as saying that whilst some of the enforced returnees remain in Colombo, "a majority travel to areas such as Jaffna, Puttalam, Trincomalee etc". The same officer adds that "I knew that many [of] IOMs, VARPP returnees go to Jaffna, Puttalam, Trincomalee etc." In an Annex details are given about travel to various areas. Travellers to Northern Province, (Vavuniya, Mannar, Kilinochchi and Mullaitivu) are said to require security clearance/approval, except that no passenger is allowed to travel to Kilinochchni and Mullaitivu Districts "due to security reasons". Travel to Northern Province – Jaffna Peninsula – is said to be by air. With VARPP returnees IOM coordinates the clearance procedure.

Recent evidence concerning checkpoints and search operations in Colombo

111. As already noted, the ECtHR considered that the main point at which Tamil returnees were likely to face a risk of adverse treatment from the authorities was Colombo international airport. Both the experts before us agreed that the airport was the dominant point of risk. However both also emphasised that being successful in passing through controls at the airport was no guarantee that one would not be apprehended later. That insight could be said to be borne out by one of the examples we noted in our treatment above of Colombo airport incidents: see the TamilNet report about an incident of 14 June 2009 (see above, para 100). Further, there is a report from TamilNet dated 25 June 2009 concerning two Tamil youths whose vehicle was stopped at a road block in Seeduwa area after they had returned from Singapore and they were arrested and detained on suspicion of being involved in terrorist activity. Another TamilNet report of 28 August 2009 concerns a Tamil youth from Jaffna abducted outside a lodge in Colombo; it was said he had been expelled from Malaysia where he had sought refuge in 2006.

112. Media sources such as TamilNet continue to report a number of incidents in Colombo of arrest and/or detentions of Tamils at checkpoints in Colombo or in the course of search operations, although the frequency and scale of such incidents has clearly lessened from what they were in the period of Eelam IV,

113. A TamilNet report dated 8 June refers to police having arrested two Tamils (who had returned from abroad) in their house in Colombo. There are other reports for the following dates: 12 June, concerning a cordon and search operation resulting in the detention of 33 Tamils ( it was said that was because they had failed to register with the police); 20 June, describing the police arrest of twelve Tamil civilians in a cordon and search operation ( they were said to have been detained because they had failed to prove their identity); 23 June, describing a similar arrest of seven Tamil youths; 26 June, dealing with the arrest of seventeen Tamil civilians; 1 July, dealing with the arrest of three Tamils civilians suspected of being escaped detainees from one of the

camps in Vavuniya and supporters of the LTTE; 26 July, regarding 8 Tamil youths from Jaffna; 2 August, concerning hundreds of Tamils interrogated during large scale search operations (no arrests reported); 3 August (arrest of five Tamil youths); 8 August (arrest of two Tamil residents of Jaffna; 9 August (one Tamil suspected of being an LTTE active member); 14 August (twelve Tamil youths said to be from north, east and upcountry), 25 August (several Tamils civilians); 28 August (four Tamils youths); 31 August, concerning four Tamil civilians from the north and east (they were said not to have registered with the police in the area); 11 September (two Tamil youths); 1 October (five Tamil youths); 7 October (one Tamil youth); 8 October (two Tamil youths); and 12 October (3 Tamil youths).

114. We note that in LP and AN & SS the Tribunal had similar evidence of incidents of this type, as did the ECtHR in NA. In light of that evidence it was noted that Tamils most at risk of arrest and/or detention in the course of such checks or searches were those who did not have ID documents or who had not registered with the local police. Whilst as a result of a Supreme Court ruling in 2007, there are no longer permanent checkpoints, it is clear that many mobile checkpoints still operate in Colombo. What can we glean from this type of evidence? It often gives incomplete particulars, for example, the TamilNet reports do not always specify whether the Tamils arrested and/or detained are from the north or east. However, even making generous allowance for the likelihood that the TamilNet reports are not likely to cover all actual incidents, it would seem that the frequency of such incidents and the numbers involved have reduced considerably from what they were in the period immediately preceding the end of the conflict; certainly there appear to be fewer incidents of wide scale cordon and search operations accompanied by mass detentions. In the most recent such operation we know of, on 1 August 2009. there were no reports of arrests of detentions. That appears to be the only large-scale cordon and search operation recorded during the period May 2009-late October 2009. It is difficult to tell from the TamilNet reports of the various incidents how many of those arrested were persons who had no ID documents or who had failed to register with the local police. Overall we see no reason to take a different view from that reached by the ECtHR in NA, that the evidence of checks and cordon and search operations in Colombo does not indicate that either Tamils generally or Tamils from the north and east more specifically face a real risk of arrest or detention.

Recent evidence of checkpoint incidents outside Colombo

115. As to checkpoints outside Colombo, the respondent submitted a list of reports from TamilNet covering arrests from June 2009 of Tamils and others in the north east, as well as in other regions of Sri Lanka excluding Colombo; the list also covers other types of incidents. Mr Chelvan has not sought to suggest that this list missed out any relevant items known to the experts. In our judgment, the evidence does not suggest that the authorities manning checkpoints would check or rely on data different from that consulted by those manning airport controls. We are prepared to accept that this evidence indicates that Tamils travelling to areas in the north that have been recent conflict zones or are the sites of government camps holding civilians are subject to closer scrutiny as to their eventual destination and the purpose of their journey. On the other hand, since it appears that in order to be allowed to set off on journeys to such areas Ministry of Defence permission is needed, possession of such clearance is likely to answer any doubts officials may have.

FCO travel advice

116. In its travel advice for Sri Lanka (still current at 26 October 2009), the FCO notes that although the conflict has ended:

> "...politically motivated violence, abductions and criminality persist throughout the country, particularly in the north and east. The Government maintains its State of Emergency, under which it has extensive anti-terrorism powers. Increased security measures including checkpoints remain throughout the country. Always carry formal photographic identification with you. Detentions do occur, particularly of people of Tamil ethnicity."

117. Further down, the advice stated that the LTTE were believed to retain some capability to mount terrorist attacks and that "heightened levels of security (e.g. checkpoints, roadblocks) …are likely to be maintained for the foreseeable future". It gave details of suicide bomb attacks in 2009, the last of which took place on 10 March 2009 at a political gathering in Akuressa, near Matara. It was also noted that the security situation across the east was volatile. The advice noted that in the north the coastline and adjacent territorial sea of the Trincomalee, Mullaitivu, Jaffna, Kilinochchi and Mannar administrative districts in the north and east had been declared restricted zones by the Sri Lankan authorities and should be avoided.

118. One reason for quoting from this advice is to pinpoint why we see little merit in Mr Chelvan's submission that in light of this FCO advice "Tamil ethnicity by itself was a risk category for detention". All this report states is that detentions of persons of Tamil ethnicity is that they "do occur", something not at all in dispute. This advice forms part of the evidence but it really helps very little in assessing either the scale of detentions or as to what is likely to provoke them.

Home Office policy on returns

119. In a written statement dated 9 September 2009, Mr A P Saunders of the Country Specific Policy Team, UKBA, stated that throughout the period May 2006 until May 2009 the government's policy on returns to Sri Lanka had been to encourage voluntary returns in the first instance and to enforce returns where a failed asylum seeker was unwilling to depart voluntarily. Noting that on 23 October 2007, the ECtHR had requested the UK government to suspend enforced returns to Sri Lanka pending the outcome of a test case before that court, Mr Saunders said that in response the government had declined to suspend returns. However, after the ECtHR published its eventual judgment in NA, the UK government wrote to the Court in August 2008 giving an undertaking that all Sri Lankan failed asylum seeker removal cases would be reviewed against the NA judgment prior to removal and claimants would be allowed to submit further evidence in support of their cases. As a result:

> "The court accepted our undertaking on which basis they lifted the Rule 39 measures on the large numbers of other cases which had been filed with the Court concerning the safety of returns to Sri Lanka. It is not accepted that this amounted to a stay on removals to Sri Lanka, as removals were effected in cases that did not result in a grant of leave or a further appeal right, after that consideration."

120. Mr Saunders noted, however, that since 18 May 2009, the government had not made any enforced returns, pending a review of the situation in Sri Lanka following the end of the conflict on 18 May 2009. In a witness statement dated 26 October 2009, Mr P Douglas of the UKBA Country Analysis and Returns Strategy Team stated that:

> "This review is now complete and our usual practice regarding enforced returns is confirmed."

121. Mr Chelvan sought to submit that this evidence revealed that between 18 May 2009 and sometime in late October 2009 the Home Office had adopted a policy to suspend enforced returns to Sri Lanka and that this could only have been because of an acceptance that the level of risk to such returnees had altered for the worse. In support he cited remarks by HH Judge Pelling QC in R (B) and the Secretary of State for the Home Department [2009] EWHC 2273 (Admin). At paragraph 18, having set out the contents of a witness statement from Mr A Saunders (very similar to the one produced to us), Judge Pelling QC stated:

> "In my judgment this statement is as significant for what it does not say as for what it does say. First, at least one reason for the review must be not so much about the end of hostility itself but a concern about possible human rights abuses against the minority in the aftermath."

122. We cannot assent to Mr Chelvan's submission. During this period the government continued to run its AVR programme, which it could not have done if it believed the situation in Sri Lanka put minority returnees per se at risk. During the relevant period the Home Office did not revise its Operational Guidance notes appertaining to enforced returns. It made perfect sense that in May 2009, the Home Office should decide to review their guidance, given that the end of a 26-year long conflict had at least the potential to alter categories at risk significantly. Such a view did not entail any acceptance of an actual change in the UK government's view of risk categories. (Likewise it seems to us that the earlier undertaking to the ECtHR in the wake of NA caused a change to the processing of Sri Lanka cases, not to an alteration of existing policy). There is simply not the information available for any conclusion to be drawn as to whether there were any additional reasons for the stated review. Accordingly, with respect to Judge Pelling, we do not regard ourselves as bound by the above comment which was not necessary for the decision and made in a quite different context.

The LP risk factors

123. In LP at para 238 the Tribunal stated:

> "During the course of the determination we have considered a list of factors which may make a person's return to Sri Lanka a matter which would cause the United Kingdom to be in breach of the Conventions. As in previous country guidance cases, this list is not a checklist nor is it intended to be exhaustive. The factors should be considered both individually and cumulatively. Reference should be made to the earlier parts of this determination where the factors are considered in more detail but for ease of reference they are set out here. There are twelve and they are not in any order of priority:-

"(i) Tamil ethnicity.

(ii) Previous record as a suspected or actual LTTE member or supporter.

(iii) Previous criminal record and/or outstanding arrest warrant.

(iv) Bail jumping and/or escaping from custody.

(v) Having signed a confession or similar document.

(vi) Having been asked by the security forces to become an informer.

(vii) The presence of scarring.

(viii) Returned from London or other centre of LTTE activity or fund-raising.

(ix) Illegal departure from Sri Lanka.

(x) Lack of ID card or other documentation.

(xi) Having made an asylum claim abroad.

(xii) Having relatives in the LTTE."

124. To some extent the assessment we have just given of particular items of evidence has already adumbrated our understanding of risk factors presently, but it makes sense to deal discretely with the central issue raised in this case of whether the risk factors, as set out in LP and further analysed by the ECtHR in NA require modification in the light of recent developments in Sri Lanka. We have already stated that we do not seek in this case to decide whether recent events merit the adding of two entirely new risk factors (journalists and NGOs). As heralded earlier, we are only concerned, as was LP, with factors affecting Tamils and to what extent they need modifying or modified application.

125. In AN & SS, the Tribunal adopted the refinement suggested by Collins J in Thangeswarajah & Others [2007] EWHC 3288 (Admin) who considered that several of the LP risk factors were better characterised as "background factors" – namely: (i), (vii), (viii), (ix), (x), (xi) – in that "they do not in themselves indicate a real risk, but they are matters which if there is a factor which does give rise to a real risk that the individual will be suspected of involvement in the LTTE, add to the significance of that". So too did Toulson LJ in VS (Sri Lanka) [2008] EWCA Civ 271. However, we note that in NA, despite referring to this observation of Collins J, the Court did not expressly adopt it and on balance we consider the LP risk factors continue to hold good as they stand. The desire for refinement is a valid one, especially when the risk factors run into double figures, but it seems to us that it can be achieved without any subdivision. We see an intrinsic danger in differentiating between "risk factors" and "background factors" if the former are then elevated to de facto risk categories, which they are not. The wisdom we derive from the ECtHR's analysis of the LP approach is that it treats each factor as furnishing a point of focus for considering related indicators and also allows for adjustment in respect of each in the light of new evidence (in LP and in NA some factors were considered to be merely contributory,

others as more significant). Further it seems to us that the process adopted in LP itself at paragraphs 207-222 is not in practice substantially different from that suggested by Collins J.

126. The above comment also helps provide the framework for our review of the risk factors in LP, to which we now turn (the LP numbering of the risk factor is given in brackets).

Tamil ethnicity (i)

127. In LP the Tribunal wrote:

> "[Tamil ethnicity] is clearly a relevant starting point in any Sri Lankan case at the current time. We remind ourselves of the objective figures we have noted above, and the need for caution when assessing risk in Sri Lanka, especially Colombo. Coupled with that must be the knowledge of where applicants came from in Sri Lanka, where they have grown up, and their involvement (or lack of it) with Tamil organisations whether voluntary, involuntary or otherwise. In addition it is also necessary to distinguish what were known as "Sri Lankan Tamils", that is those who predominantly come from the areas in the north and east, and "Indian" or "Plantation" or "Hill" Tamils who are more widely spread, but were more recent immigrants to Sri Lanka from Tamil Nadu and southern India and originally were primarily involved as workers on tea plantations. The background evidence shows different risk profiles for the subgroups of those with Tamil ethnicity. We have also noted that considerations of age and perhaps gender should be taken into account".

128. The Tribunal went on to identify a higher propensity on the part of the Sri Lankan authorities to target young male Tamils, but rejected the notion that this subcategory was itself a risk category.

129. In the light of the most recent evidence it is clear that it remains the case that young male Tamils are at relatively higher level of risk than other Tamils; it is they who are more likely to be subject to incidents of arrest and detention. Because most of the TamilNet reports refer simply to "persons", we cannot be sure females are not involved, but the virtual absence of any reference to them is striking. The Sri Lanka Guardian article referred to earlier made mention of a recent incident involving a female returnee, but we have found this report unreliable. However, in view of the fact that in the August 2009 FCO report the Swiss Embassy representative stated that "females with a Vanni National Identity card (NIC) may also be targets", we consider it right to be cautious. Whilst therefore we conclude that on balance young female Tamils will not face the same level of risk as young male Tamils, we concur with Dr Smith and Professor Good's assessment that relative youth remains a more important indicator of risk than gender.

130. (Leaving aside his submissions about journalists and NGO members) Mr Chelvan canvassed the addition of a separate but related risk factor, namely "Tamils from the north and east", especially from the Vanni or former-conflict zones. He emphasised that it was now the view of the UNHCR, as expressed in its April 2009 Guidelines and its July 2009 Note, that this group was at particular risk. Indeed, as we read his submissions, he asked us to find that this group should now constitute not merely a separate risk factor but a separate risk category.

131. We are surprised that Mr Chelvan should posit that UNHCR has only recently held such a view. Its December 2006 Position Paper stated that Tamils from the north and east were at risk of targeted violations of their human rights and recommended that all asylum claims of Tamils from the north or east should be favourably considered. Both the Tribunal in LP and the ECtHR in NA (see paragraphs 65-68) considered that paper, yet decided that the evidence did not support such a view.

132. Having considered the further evidence before us, we are not persuaded that Tamils from the north and east constitute either a stand alone risk category or a separate risk factor. The situation in Sri Lanka has changed dramatically since LP but not such as to place this category of Tamils in a significantly different position. We are prepared to accept that the fact that a person found to be from the north, especially from an area where the LTTE previously held it as an LTTE stronghold, would be regarded with an increased level of suspicion in the mind of Sri Lankan authorities carrying out checks. We also accept that (at least up until very recently) in the north an extraordinary number of Tamil civilians were being held in camps that effectively deprived them of their liberty and that they were subject there to individual screening to see if they were involved with the LTTE. That being the case, we consider that assessment of risk to Tamil returnees from abroad whose home areas are either former conflict zones or places where there are still SLA-run camps will require a nuanced treatment having particular regard to their past history and circumstances . But what we are concerned with in asylum-related Sri Lankan cases is the different question of risk to Sri Lanka to Tamils from the north (or east) if they are returned to Colombo. As already explained, we do not think that what is happening presently to many Tamils in the north is an accurate index of what will happen to Tamils originally from the north who face return from abroad to Colombo.

133. For Tamils originating from the north and east seeking to stay in Colombo, the thrust of the evidence contained in the expert reports and the major country reports is that this category faces a higher risk of being arrested treated adversely than Tamils who are resident in Colombo. The FCO travel advice still current on 26 October 2009 noted that arrests/detentions of those of Tamil ethnicity do occur. However, this evidence does not indicate that the level of risk of such arrests/detentions is presently higher than it was at the time of either LP or NA; indeed, the totality of the evidence appears to show that the level of risk to Tamils of being arrested and/or detained is lower today. In addition, the evidence before us does not support the proposition that the authorities in Colombo can be continuing with their reported policy of pressurising or forcing Tamils from the north to return. Professor Good (like Dr Smith) highlighted this policy in his written report but in evidence to us he accepted that the authorities cannot really want Tamils originating from the north and east heading back to the north in any numbers, when they were struggling to cope with the huge numbers of Tamils from the north in camps. The situation in the camps may now be changing, but for the time being, we consider that we should be cautious about assuming that the authorities in Colombo would automatically consider all Tamils without a reason for being in Colombo related to business, property, employment, seeking medical help or travelling abroad as potential LTTE sympathisers.

Previous record as a suspected or actual LTTE member or supporter (ii)

134. From our earlier discussion, it will be evident that a previous record held on a person describing him as an actual LTTE member may be a factor likely to give risk to a real risk of serious harm. Much will depend on the precise circumstances; events are very much at the stage where the Sri Lankan authorities are hoping that existing LTTE members will follow the example of the Karuna breakaway group and join the country's mainstream political system; they also speak of "rehabilitating" LTTE members. However, for a returnee, a record noting past membership would very likely lead to detention for a period and we continue to think that in relation to persons detained for any significant period, ill-treatment is a real risk. The same would apply, in our judgment, to persons currently suspected of being LTTE members; if that is how their record describes them, then detention and ill-treatment are likely consequences.

135. There is a further point about records. We consider that in light of the evidence from Dr Smith regarding the increasing sophistication on the part of the Sri Lankan authorities in their record-keeping, it is reasonably likely that records will also contain indications of the level of security threat that an individual is or is not considered to pose: see above para 82.

Previous criminal record and/or arrest warrant (iii)

136. In LP at para 211 the Tribunal stated:

> "Both parties appear to agree that returning a young Tamil with an outstanding arrest warrant, validly found on the facts, will be a significant factor. This does not alter the previous country guidance determinations in cases such as Jeyachandran or the Court of Appeal case of Selvaratnam. Again the issue will be to establish the credibility of the criminal record, or an arrest warrant, and decide if it is reasonably likely to exist in respect of the applicant. An outstanding arrest warrant, or previous criminal record, is thus, in our view, a significant factor that needs to be taken into account in the assessment of the totality of the risk. However, it does not mean of itself, that the applicant has a well-founded fear of persecution (or other serious harm) on return to Sri Lanka for that reason alone."

137. On the evidence before us we consider these observations remain as valid now as they were then. It may be that, if the criminal history concerned is unrelated to LTTE activities and is not recent, this factor will carry less weight, but the treatment of those in detention for any significant period appears to be just as likely to involve serious harm in LTTE and non-LTTE related cases alike.

Bail jumping and/or escape from custody (iv)

138. In LP it was held that:

> "213. … We agree with the logic that those who have been released after going to court and released from custody or formal bail are reasonably likely, on the evidence, to be not only recorded on the police records as bail jumpers but obviously on the court records as well."

139. Such persons would have "a profile that could place them at high level of risk of being identified from police computers at the airport". Their treatment was seen to

depend upon the basis on which they were detained in the first place, taken together with their particular profile. The evidence pointed to someone with a record as an escapee from the government detention or as a bail jumper from the court system being, in some cases, at real risk of persecution or serious harm. We observe, in passing, that the Tribunal in LP made very clear here that it was not the existence of a record per se that created the relevant risk but "a record as an escapee…or as a bail jumper from the court system".

140. The Tribunal strongly rejected the suggestion, however, that into this category should be placed those released after payment of a bribe, albeit:

> "…[m]uch will depend on the evidence relating to the formality of the detention (or lack of it), and the manner in which the bribe was taken and the credibility of the total story. If the detention is an informal one, or it is highly unlikely that the bribe or 'bail' has been officially recorded, then the risk level to the applicant is likely to be below that of real risk."

141. None of the evidence submitted in this case points to a different conclusion.

Signing a confession or similar document (v)

142. Similarly, nothing before us suggests that we should take a different view of this risk factor than that adopted by the Tribunal in LP at para 215.

Refusing requests by security forces to become an informer (vi)

143. The same observation applies in respect of LP, para 216.

The Presence of Scarring (vii)

144. So too in respect of LP, para 217. Given that a specific focus of current interest is in tracking down LTTE cadres, it is reasonable to assume that where there are other significant factors in play, this would bring an applicant to the attention of the authorities. A body inspection then becomes more likely and discovery of scarring consistent with battle-related injuries may intensify the risk of arrest, detention and subsequent ill-treatment.

Return from London or other centre of LTTE activity or fund-raising (viii)

145. In LP this factor was seen as highly case-specific and so dependent on the presence of other significant factors giving rise to suspicion of a returning failed asylum seeker. Mr Chelvan pointed out that that Dr Smith regarded one of the new priorities of the Sri Lankan government as being to dismantle the overseas procurement network, a priority it can put more resources into now it is no longer tied up with fighting the LTTE in Sri Lanka. Professor Good also identified this factor as one that had increased in significance for this reason. However, in our assessment, whilst such increased concern is likely to enhance the level of risk to persons who are principal or high profile figures in overseas fund-raising activities, it will not raise the level of risk to failed asylum seekers returned from the UK who simply happen to arrive back in Sri Lanka following removal from London. The appellant's submissions

on this point were based on mere supposition. Evidence to indicate that the Sri Lankan authorities take a greater interest in returnees from a specific location is somewhat inconclusive: in any event, none of the recent TamilNet evidence recorded any incident affecting a returnee from the UK.

Illegal departure from Sri Lanka (ix)

146. Whilst considering this factor to be very much case-specific, the Tribunal in LP agreed that there was evidence in the Hotham Mission Report (see LP, paras 126-7) and in the evidence of Dr Smith and the Canadian IRB "that it may now in the heightened level of insecurity in Sri Lanka, add to the profile" (para 219). The ECtHR in NA also noted the IRB evidence of 22 December 2006 which stated:

> "Persons who leave Sri Lanka using false documents or who enter the country under irregular or suspicious circumstances are reportedly more likely to be singled out and questioned under the country's current state of emergency (ibid; see also Daily News 15 Sept 2006). The state of emergency reportedly permits the Sri Lankan authorities to make arrests without warrant and to detain persons for up to 12 months without trial (US 8 Mar.2006). Under Section 45 of the country's Immigrants and Emigrants Act, amended in 1998, persons found guilty of travelling with forged documents may be subject to a fine of between 50,000 and 200,000 Sri Lankan Rupees (LKR) (approximately CAD 533 (XE.com 12 Dec. 2006a) to CAD 2,1333 (ibid 12 Dec.2006b) and a jail term ranging from one to five years (Sri Lanka 1998)."

147. In their evidence to us, both Dr Smith and Professor Good thought this factor would now have greater significance, but they adduced virtually no evidence in support and we can find little to support such a view except in respect of those known to have used forged documents to leave Sri Lanka. As to the reference to the "heightened level of insecurity", we think that by virtue of the conflict having ended, the level, however described, cannot be as high as it was then. In the recent August 2009 FCO report there is very little to suggest that illegal exit is treated as in itself a basis for arrest or detention at the airport or subsequent checkpoints. Given that a claim by Sri Lankan failed asylum seekers to have made an illegal exit is not uncommon, it is surely significant that, in the words of Dr Smith before us, very large numbers of failed asylum seekers would be seen by the authorities in Sri Lanka as having been economic migrants and would be of no interest to them at all ;and, in the words of Professor Good in his main report, "it seems always to have been the case that most returnees pass through the airport successfully" (para 135).

Lack of ID card or other documentation(x)

148. In LP the Tribunal accepted Professor Good's evidence that carrying an ID card in Sri Lanka "has become a must" and lack of it could lead to a higher risk (para 220). We continue to take the same view. However, the evidence we have from the BHC, Colombo and the August 2009 FCO report demonstrates that failed asylum seekers are issued with emergency travel documents after checks have been made with the Sri Lankan High Commission in London. Ordinarily, possession of such a document enables returnees to pass through airport controls. There is very little evidence to suggest that for returnees (even if their emergency travel documentation is taken from them at the airport) the process of applying for ID documentation in Colombo is either difficult or subject to significant delay. The authorities appear well-used to

dealing with the issuance of replacements passports/ travel documents. Professor Good did contend at para 168 of his main report that the risk of being discovered to have been previously detained and to be a returned failed asylum seeker was "likely to be particularly intense when [the appellant] presents herself for registration...", but offered no evidence in support and in the background materials there is virtually no evidence to indicate that persons are arrested or detained when seeking ID documentation and or when registering with the local police.

Having made an asylum claim abroad (xi)

149. Like the Tribunal in LP we have no hesitation in accepting that the process for putative returnees applying for travel documentation (or replacement passports) from the Sri Lankan High Commission in London is likely to result in information regarding such persons being passed on to the authorities in Colombo. Indeed, at least in the context of returns by way of a charter flight, there would appear to be specific liaison between the UKBA, the BHC, ILM and the Sri Lankan authorities. Whether, however, such information is treated by the Sri Lankan authorities as a cause for any particular interest appears even more doubtful now than before, in view of the evidence concerning the January 2009 charter flight return of thirteen failed asylum seekers. Given the likely fact they were known in advance by the Sri Lankan authorities at the airport to be failed asylum seekers, we regard it of some significance that there is no evidence whatsoever that any one of them met with difficulties. Professor Good posits that for individual returnees, the process would be quite different, but on our analysis of the recent evidence in recent media reports and the August 2009 FCO report, the evidence does not indicate that it would. We accept that the January 2009 return pre-dates the end of the conflict, but if anything it seems to us that at that (conflict-intensive) point in time scrutiny of returnees would have been higher than now. Given the importance the Tribunal in LP attached to BHC evidence that in the past, at least, lists of failed asylum seekers have been in the hands of Sri Lankan police conducting cordon and search operations in Colombo, we think it justified to retain this as a risk factor, but would regard it as likely now to be a relatively minor contributing factor at best.

Having relatives in the LTTE (xii)

150. In LP the Tribunal stated:

> "222. This factor we consider is again a highly logical one but again needs to be taken into account with the totality of other evidence and the profile of the other family members. On its own, without established and credible evidence of the details of the other family members and their known role or involvement with the LTTE, it will be of limited weight."

151. That observation continues to reflect the preponderance of the evidence before us.

152. In the nature of country guidance the Tribunal will have to keep the situation in Sri Lanka under review, particularly given that as all were agreed in the context of this case there was as yet relatively little evidence to hand about the post-conflict situation. However, even if it transpires that the LTTE recommences insurgent activities, we would expect decision-makers to bear in mind that even at a previous

period when such attacks were frequent (and the LTTE also had a conventional military status), successive Tribunal decisions have not seen the situation as one in which failed asylum seekers from the north or east face a real risk of ill treatment on the basis of those characteristics alone.

**Our Assessment: the appellant's case**

153. It is for the appellant to prove her case that she is entitled to refugee protection, humanitarian protection and Article 3 ECHR protection to the standard of reasonable degree of likelihood or real risk. We must consider her case in the context of the evidence as a whole. If we are satisfied that by virtue of having been raped and subjected to electric shock whilst in army detention the appellant suffered past persecution, we must bear in mind that Article 4(4) of the Qualification Directive (paragraph 339K of the Immigration Rules) states that the appellant's persecution is to be treated as a "serious indication" of continuing risk "unless there are good reasons to consider that such persecution will not be repeated ...". When considering internal relocation, we must apply the guidance given by the House of Lords in Januzi [2006] UKHL 5 and AH (Sudan) [2007] UKHL 49, which closely mirrors the two-pronged test set out in Article 8 of the same Directive (para 339O of the Rules) and which is conveniently summarised as comprising first a test of "safety" and second a test of "reasonableness". Given the agreement between the parties that the armed conflict in Sri Lanka is now over, no issues arise under Article 15(c) of the Directive (para 339C(iv) of the Rules).

154. The appellant's evidence is best considered in two parts: evidence about her historic situation and evidence about her recent situation. As to the former, we have already noted that the findings of fact made by the previous IJs are to stand. Before us the appellant did not give evidence but produced two written statements, one dated 16 October 2009, the other dated 26 October 2009. The parties were able to reach agreement as to how that evidence was to be assessed, in the following terms:

> "It is agreed that the appellant gave birth to a daughter in the United Kingdom on 13 December 2008 and that if returned to Sri Lanka her daughter would accompany her. The appellant claims to fear that if returned to Sri Lanka she would have no family or social network on which she could rely.
>
> The Secretary of State does not put his case on the basis that she does have such a network.
>
> The appellant claims to fear that if returned to Sri Lanka, she would be arrested, detained and mistreated on account of being a Tamil from Vanni and on account of being a suspected LTTE suicide bomber; and on account of having previously been detained and mistreated in Sri Lanka, and that she would be socially ostracised and mistreated on account of being an unmarried single parent.
>
> The Secretary of State does not put his case on the basis that she does not have such subjective fears. The parties agree that the question whether any such fears have an objective basis is a matter for the other evidence in the case.
>
> The appellant claims to have a mother, aunts and other family members who were in Kilinochchi when she left.

The Secretary of State does not put his case on the basis that she does not."

155. In the course of submissions argument arose over the precise ambit of the accepted findings of fact pertaining to the appellant's past history. Mr Chelvan sought to maintain that as the previous IJs had both found the appellant credible, the accepted findings should include the fact that she had been told by those who arrested and detained her in 2006 that they suspected she was a LTTE suicide bomber: see above para 11. Mr Staker remonstrated that neither of the IJ's had made any specific findings to this effect. As we made clear during the hearing, we consider Mr Chelvan is right about this. It is manifest that both IJs found the appellant's account credible without any real qualification and the statement of reasons agreed upon by the respondent said that those findings of fact were to stand. We accept, therefore, that the appellant was told by the authorities then that they suspected her of being an LTTE member. Nevertheless (as we shall come to shortly), we were not with Mr Chelvan in what he sought to make of this aspect of the appellant's evidence.

156. As regards the appellant's recent statements, both of which post-date the hearing before IJ Mitchell, the position is different. The agreement cited above makes clear: (i) that this evidence properly set out the appellant's subjective fears; but (ii) that (save in one respect) whether any such fears have an objective basis is a matter for assessment in light of the evidence taken as a whole. The limited area of exception concerns the appellant's family circumstances. The respondent does not dispute that if returned to Sri Lanka (and in contrast to her position when she left), she would not have a family or social network on which she could rely. Given that what the appellant says in her recent statement about her mother currently being in a Vavuniya army camp tallies with the background evidence about the situation in that area, we see no reason to take a different view.

157. The value of the appellant's evidence as set out in the recent statements is otherwise limited. Much of the statement of 16 October 2009 consisted in the appellant's own surmise about what records the authorities would hold on her and her own observations about country conditions and risk factors in Sri Lanka, without any suggestion there or anywhere else that she possesses any recent or reliable knowledge about such matters. Its principal importance then is in verifying the changes in her domestic circumstances. On 13 December 2008 her daughter was born. She no longer has any contact with the father, who cut off contact when she told him she was pregnant. She does not believe her family would accept her (her sister's husband no longer speaks to her) and she believes that ordinary people in Sri Lanka would stigmatise her too. She said she had not had any contact with the family who put her up in Colombo for three months in 2006 and she does not believe they would be prepared to help her again. On the basis of this evidence we accept that she faces return to Sri Lanka as a single mother and someone who may not be able to look to any family support or friendship network.

158. The appellant also says in her recent statement that she had attended one of the demonstrations that took place in London in the early part of 2009 protesting about the government's conduct during the last stages of the civil war. She said she thought this would add to the risk she faced on return, but that was not a point advanced on her behalf by Mr Chelvan and we do not consider that her mere

attendance at such a demonstration (during a period when large numbers of UK Sri Lankans were in attendance) would make any difference to how she would be perceived on return.

159. The appellant also stated that if she returned her mental health situation would deteriorate and she would not be able to access any treatment. However, whilst we attach very significant weight to the fact that she was the victim of a double rape in 2006, the only medical report put into evidence did not identify her as someone who continued to be significantly traumatised. Her ability to access treatment if needed is entirely a matter to be decided by reference to the background country evidence.

160. We turn next to consider whether, given the appellant's particular circumstances as just outlined, she will on return be at real risk of adverse treatment from the authorities. That requires an examination of the strength of her claim to be at real risk of serious harm as a result of an accumulation of the risk factors identified in LP (which we have found to have continuing efficacy) in the context of the evidence as a whole. We must carry out this examination having due regard to the general situation in Sri Lanka as assessed earlier. So far as the risk factors are concerned, we need to address two questions: (i) what risk factors are engaged in her case; and (ii) whether singly or cumulatively they give rise to a real risk of serious harm.

161. In order to assess whether the appellant is eligible for refugee or humanitarian protection we shall address first the issue of risk in her home area. We consider that we should proceed on the basis that she has established such a risk. We must take into account that she is someone who, following her apprehension at a checkpoint in Colombo was detained and whilst in detention was raped and subjected to electric shock treatment. Whilst not formally conceding that she would be at risk in her home area, Mr Staker did accept she could not travel to that area. He also accepted that this was because the Sri Lanka government had prohibited it for security reasons. It is not in dispute that Kilinochchi is a former conflict zone. We lack clear evidence as to whether there have been (or continue to be) government camps in Kilinochchi. Dr Smith's evidence, based on what was happening in the north at the date of hearing, was that, if in Kilinochchi, the appellant would be "certainly detained and with the real possibility of intense interrogation"; Professor Good's evidence on this matter was to similar effect; their evidence on this was not challenged by Mr Staker. It is established law that in assessing risk under the Refugee Convention we must do so by considering the issue hypothetically, assuming return to that area today, even if in fact (as here) a person cannot access that area. (On the very latest news reports, the SLA have said that persons in the camps in the north are free to leave and many have now left or are in the process of doing so, but there is nothing to indicate that the authorities in the areas where there are camps have ceased to ensure all persons in the area have been screened.) Were this appellant to arrive in Kilinochchi, with her young daughter now we are satisfied that she would find herself in an extremely vulnerable situation. She would very likely to be stopped and checked and it would come to light that she was not someone who had been in a camp and was not someone, accordingly, who had been screened. She might be detained so that she can be screened, if for no other reason than that she had come to an area regarded as off limits for state security reasons. She might be ordered to go elsewhere. We cannot see in either of these scenarios that the appellant could in any meaningful sense be said to have achieved safety from persecution or serious harm. It may be

that the situation in Kilinochchi will normalise in due course, but it is too early to assume that. We think it right to accept for the purpose of this case that the appellant would face a real risk of persecution and serious harm in her home area and that it would be for a Refugee Convention reason, based on her Tamil ethnicity. It may be, given the latest information that the situation in regard to the camps will continue to change fast and that in a few weeks or months time we would not reach the same decision as we do here, but our duty is to make an ex nunc assessment. Accordingly, the sole issue in the appellant's case is whether she has a viable internal relocation alternative. In considering that, we must have regard first of all to the issue of safety and secondly to the issue of reasonableness.

162. It is particularly important in the appellant's case that when considering safety outside of her home area we keep in the forefront of our minds that she has been the victim of past persecution - and past persecution arising in the context of her apprehension at a government checkpoint. That being the case, we must ask ourselves throughout our subsequent analysis whether there are good reasons for considering there would not be a repetition of the same type of incident and its sequelae. We begin by noting that it is agreed by the parties that several of the risk factors are not engaged in this case: the appellant does not have a previous criminal record and/or outstanding arrest warrant (iii); she did not sign a confession or similar document (v); she does not have any scarring (vii); and she does not have relatives in the LTTE (xii). We consider that two other factors can also be regarded as of no significance in this case. The appellant accepts that she was not asked to become an informer, but says in her recent statement that it is possible her former boyfriend (Mr X) may have promised the authorities that she would; that, however, is pure speculation on her part and we find it extremely unlikely; so factor (vi) is not engaged. Whilst accepting that the appellant has an ID card, Mr Chelvan submits that as she has no passport she will face significant difficulties in obtaining documentation needed to live in Colombo. However, in light of our earlier assessment of documentation, we are satisfied that she will have been issued either with a passport or (more likely) emergency travel documentation before she leaves the UK and once in Colombo would be able to obtain any further documentation needed to live in Colombo relatively quickly and without the process exposing her to any significant risks of arrest or detention: hence factor (x) is not engaged.

163. What risk factors are engaged? Four patently are: she is of Tamil ethnicity (i); she will be returning from one of the overseas centres of LTTE activity or fund-raising (viii); she has made an asylum claim abroad (xi); she made an illegal departure from Sri Lanka (ix). As explained earlier, it is necessary to apply each of these factors to the particular circumstances of her case in the context of the light shed on them by our current assessment of the background situation in Sri Lanka.

164. We deal first with Tamil ethnicity (i), bearing in mind that the Tribunal in LP found that the background evidence shows different risk profiles for sub-groups of those with Tamil ethnicity. Earlier, we did not accept that young female Tamils will face the same level of risk as young male Tamils, although we concur with Dr Smith's Professor Good's assessment that relative youth remains a more important indicator of risk than gender. Like the Tribunal in AN & SS, when considering the position of Miss AN (para 114), we think the fact that the appellant will return with a small child will lessen somewhat the risk of adverse interest in her, although the authorities will

remain watchful for female LTTE operatives. She is someone who does not speak Sinhalese, but that is something she will have in common with a considerable number of other Tamils in Colombo. Because the appellant has an ID card she is considerably less likely in our opinion to be targeted than those young Tamils without one.

165. We have already explained why we do not consider the risk factor of "Tamil ethnicity" requires supplementing with a further risk factor, "Tamils from the north and east, especially from the Vanni or ex-conflict zones". In that context we did accept, however, that a young Tamil found to be from the north, especially from an area where the LTTE previously held it as an LTTE stronghold, would be regarded with an increased level of suspicion in the mind of Sri Lankan authorities carrying out checks. The appellant is from Kilinochchi, an area where fighting recently took place (and which was formerly the LTTE's headquarters). We would also accept that her being from Kilinochchi was one factor (perhaps the decisive factor) behind the decision to arrest and detain her at a checkpoint in Colombo and at an army detention centre thereafter in late 2006.

166. Clearly on return the appellant will be known to have been in London, a centre of activity and fund raising (viii). We have already noted that whilst we accept that post-May 2009 the Sri Lankan authorities are intent on dismantling the LTTE's overseas network, their concerns would appear to centre on those seen as actively involved in procurement activities, not persons perceived as mere supporters or sympathisers. We have already found that the appellant had no political profile before she left Sri Lanka and has not acquired one since her arrival in the UK; we do not regard her attendance at one demonstration in London in early 2009 as likely to have any appreciable effect on how she is perceived on return.

167. We have already assessed that in the current circumstances the mere fact of having made an asylum claim abroad will have minimal significance in the mind of the Sri Lanka authorities on return. We have already highlighted the evidence of both Dr Smith that very large numbers of failed asylum seekers would be seen by the authorities in Sri Lanka as having been economic migrants and would be of no interest to them at all ;and that of Professor Good in his main report, "it seems always to have been the case that most returnees pass through the airport successfully" (para 135).The BHC letter of 24 August 2006 (noted in para 181 of LP) accepted that lists of failed asylum seekers could form part of such operations directed at Tamil areas of Colombo, but this pre-dates the end of the conflict by some considerable time and in any event does not demonstrate that those on such lists were in fact the subject of any ill-treatment. We have found that the appellant would not be considered as involved in any way with the LTTE. However, even were they to perceive her as an LTTE sympathiser, for reasons given earlier, we think that the eclipse of the LTTE as a conventional military organisation makes it less likely that the authorities would continue to be concerned about persons likely to be suspected of performing auxiliary tasks confined to helping that organisation run. In any event, it is a factor that remains at best, as stated in LP (and echoed in NA) "a contributing factor that would need other, perhaps more compelling, factors added to it before a real risk of persecution or serious harm could be established" (para 221).

168. As regards (ix), illegal departure from Sri Lanka, we have already observed that we do not consider this is likely to be a factor of much significance except where there is clear evidence of use of forged Sri Lankan documents. It is unclear from her evidence whether the passport she left Sri Lanka on was false or genuine, but it is not in dispute that she had with her a genuine ID card.

169. The crux of the appellant's case depends on assessment of her position in relation to the risk factors (ii) and (iv), i.e. "previous record as a suspected or actual LTTE member of supporter" and "bail jumping and/or escaping from custody". There is no question of her being a bail jumper, but in all other respects the relevance of these two risk factors as they apply to her is contentious.

170. We doubt that any record would have been raised on the appellant. That is not principally because her detention was by soldiers and, according to Professor Good, army detentions are less likely to be recorded than police detentions. Nor has it anything to do with the fact that her detention happened three years ago, since we accept records in Sri Lanka can go back some fifteen years. It is rather because of the circumstances of her release. The appellant and Mr Chelvan have made much of the fact that those circumstances were unorthodox. We can certainly accept that to be released by a camp commander on the intervention of a member of the Karuna faction was an unusual or unorthodox occurrence. However, we cannot accept that as a result of this occurrence the authorities could have continued to regard her as of adverse interest. Being someone who was initially suspected of being a suicide bomber it is not plausible in our judgment that the camp commander could have agreed to her release unless he was completely sure as a result of information given by Mr X that she was not anything of the kind and that she was in fact someone entirely unconnected with the LTTE: she stated in her asylum interview that "he assured them I had nothing to do with the LTTE". It would have been an act of high irresponsibility for a camp commander to have released her otherwise, particularly in the context of late 2006 when concerns to deter suicide bomb attacks in the capital had the highest security priority. Further, she was allowed to keep her ID card (whether because it had never been taken from her or because they returned it to her does not much matter), thus ensuring that she would not be subject to further apprehension on the basis that she was undocumented. In our judgment for a record to have been made of her arrest and detention in such circumstances is highly unlikely. Mr Chelvan submits that hers was "not an official release without charge" but whether or not her detention was towards the official end of spectrum or not, there is really nothing to suggest that any charge was made.

171. However, even assuming, contrary to what we have found, that a record will have been made of her arrest/detention and that it will have found its way onto an official database accessible to authorities at the airport or other checkpoints, we still do not consider she would be viewed adversely. For if a record was raised in respect of her 2006 arrest and detention, then it is very likely to record that initial suspicions about her had been allayed. In this regard we attach significant weight to the evidence from both Dr Smith and Professor Good concerning the increasing sophistication of Sri Lankan intelligence (Dr Smith's being based in part on interviews he conducted in Sri Lanka in 2008). We acknowledge that we rely here on inferences drawn from the surrounding evidence as well as on a common sense reckoning that it would surely

be in the interests of the authorities, in any record kept of the fact of her 2006 detention, to specify whether she was still regarded as a security threat or not.

172. In a supplementary submission Mr Chelvan argues that to take the view that records held would specify whether someone was regarded (or still regarded) as a security threat would be contrary to what was stated by Carnwath LJ in AS (Sri Lanka) [2009] EWHC 1763 (Admin) at para 54, when reviewing recent authorities dealing with Sri Lanka asylum cases: "The decisions of the courts did not turn on the precise content of the records or whether they were likely in themselves to identify a claimant as of serious interest". We make two separate responses to this submission.

173. The first is historical. In all of the past cases in the Administrative Court on which Mr Chelvan seeks to rely, including AS (Sri Lanka), the issue was specifically whether a fresh claim has a reasonable prospect of success; there was no assessment on the merits. It is true that the statement at para 54 of AS drew on the ECtHR's judgment in NA (which at para 145 insists that "the greatest possible caution should be taken when, as in the applicant's [NA's] case, it is accepted that a returnee has previously been detained and a record made of that detention"). However, it seems to us that in this passage the ECtHR was primarily seeking to highlight that if the authorities find someone has a record it is more likely that the person in question may become of interest to the authorities during his or her passage through the airport. The ECtHR goes on to note that the Sri Lankan authorities' "interest in particular categories of returnees is likely to change over time in response to domestic developments and may increase as well as decrease", thereby acknowledging that the nature of the interest is contingent on the category of returnee. Further, in this passage the ECtHR drew expressly on the Tribunal decision in LP and in LP the Tribunal only considered that those who were on Wanted or Watched lists held at the airport and who were actively wanted by the police or who are on a watch list for a significant offence might be at risk of being detained at the airport (para 239).

174. The second response focuses on the current position. As we have highlighted throughout, country guidance is an incremental process in which the Tribunal seeks to decide on whether any reassessment of risk categories or factors is needed in the light of changing country conditions. The additional evidence before us in this case has led us to scrutinise more than previously the matter of records kept by the authorities. Like the ECtHR we continue to think that great caution is needed in respect of someone known to have a previous record of a detention, but, like the ECtHR in NA, we also think that the basic question we have to decide is whether an applicant can establish a real risk "that he or she would be of sufficient interest to the authorities in their efforts to combat the LTTE as to warrant his or her detention and interrogation" (NA, para 133) in the light of all the available evidence. In this regard it seems to us that what will determine the extent of interest the authorities at the airport will show in a returnee is not the existence of a record but what any record will disclose. We fully accept that learning of the mere existence of a record is likely to result in the individual concerned being checked and/or interrogated more than someone without a record, but we do not consider that the evidence demonstrates that that in itself leads to the individual being detained for any significant period. This may be considered a change of emphasis from that taken by the ECtHR in para 145 of NA but it remains that for the ECtHR the question of risk was all about profile.

Further, as the judgment in NA repeatedly emphasises, assessment of risk must be done on an ex nunc basis taking account of the state of the evidence now.

175. Having considered all the evidence we conclude that the appellant would be safe in Colombo. At the initial stage, on return through Colombo airport, the appellant would not meet with adverse treatment. If any check were made on her to ascertain whether a record existed concerning her, we think it would draw a blank, but even if it did find there was a record, that record would negate any identification of her as someone linked with the LTTE. She would be identified as a (relatively) young Tamil from Kilinochchi, but it would quickly become apparent that she has not been there for over three years and so cannot have been in the area when Eelam IV took place. Plainly from our findings earlier about general procedures at Colombo airport, she will likely face questioning from either DIE or CID or SIS officials, or all three. But there is no proper basis for considering that her Kilinochchi origins, even coupled with a record of her 2006 detention and other risk factors having some application to her case, would suffice in themselves to provoke adverse interest.

176. As someone reasonably likely to be able to pass through airport controls successfully, we do not find the appellant would be the subject of adverse treatment at subsequent checkpoints in Colombo. The evidence taken as a whole does not indicate that arrest and detention of persons purely because they come from Kilinochchi or former conflict zones in the north is a common occurrence. Unlike a significant number of young Tamils who are arrested and/or detained at checkpoints, the appellant has a valid ID card; there is no reason to consider that she could not obtain further documentation needed to live in Colombo with relative ease. We have found that the authorities would not have a record of her arrest and detention, but (to repeat) even if they did this would show that it had been concluded she was not involved with the LTTE.

177. In view of our finding that the appellant would be safe in Colombo, it is unnecessary for us to assess whether she might also achieve safety in Jaffna or other parts of Sri Lanka outside Colombo, although in general terms we have already stated that apart from areas now used (at least until very recently) for or near to government-run camps, we cannot see that Tamils from the north could not relocate to Jaffna or those other parts, although much would depend on an analysis of the individual circumstances and, of course, whether it was not just safe but also reasonable to expect such persons to relocate.

178. Having established that the appellant could relocate to Colombo in safety, it remains necessary to consider whether it would be reasonable or unduly harsh for her to do so in all the circumstances of her case. It seems to us that the submissions based on her likely poor economic circumstances or likely homelessness founder before the clear evidence that the UK Government and the IOM between them offer a reintegration package to assist returnees. There is no basis for suggesting, nor did Mr Chelvan so suggest, that if required to return the appellant would not seek to avail herself of such a package.

179. It remains true, of course, that the appellant will return as a single mother without any family or friendship networks reliably accessible to her. Over time we do not think she would be unable to renew links with some family members. Her sister in Canada

still speaks to her on the phone, despite her brother-in-law refusing to talk to her or help her; be that as it may, we shall proceed on the contrary basis. Professor Good considered that her status as an unmarried single mother would mean she was stigmatised and ostracised, but the evidence he draws on appears mainly to relate to rural Tamil communities, not to the situation in Colombo. We note that the protracted civil war and the Tsunami have resulted in many families being separated and displaced and that there are a very significant number of widows and fragmented families. According to the UNIFEM 'Gender Profile of the Conflict in Sri Lanka' last updated in January 2008, there are approximately 30,000 female-headed households in Sri Lanka and an estimated 40,000 war widows for whom the loss of male breadwinners has created vulnerability to economic hardship (see COIS report, 26 June 2009, para 23.19). Viewed in the round, we consider the evidence to demonstrate that as a single unmarried mother the appellant would face some difficulties in Colombo, but not that these would be unduly harsh. In this regard we bear in mind that she has employment experience (in the computer field) and a relatively good standard of education; that she spent three months in Colombo, so will have some familiarity with the city; that, as already noted, the medical evidence does not demonstrate that she currently has any significant psychological problems and in any event there are available medical facilities in Colombo to assist persons in this category; and that she will have start-up assistance with finance and if necessary accommodation (in that regard she will be in a far better position than some other female Tamils who arrive from the north in Colombo penniless and homeless).

180. For the above reasons we conclude that the appellant would have a viable internal relocation alternative in Colombo. Hence her appeal on asylum, humanitarian protection and Article 3 grounds must fail.

181. Throughout this determination the appellant's personal identity is anonymised. In written submissions Mr Chelvan made reference to the need for the Tribunal to consider an anonymity and confidentiality order to ensure that the appellant's personal details would not become known, through publicity, to the authorities in Sri Lanka. However, he did not in the event make any specific application. We would observe, nonetheless, that in light of our findings on her case we do not consider that it would make any difference to her likely treatment on return if her details were known.

**Article 8**

182. In submissions Mr Chelvan contended (somewhat cursorily) that in light of the situation the appellant and her daughter would face on return, even with IOM assistance:

> "…the risk of sexual exploitation and social ostracism will have a sufficiently grave consequences as to engage Article 8. Whilst the interference will be in accordance with the law, it is submitted that this would be disproportionate as it renders A on return as a social pariah".

183. We consider that this submission stands to be rejected for very much the same reasons we have rejected it in the context of asylum, humanitarian protection and Article 3 It is accepted that the appellant would return together with her child and

whilst she might well face some difficulties in being able to live, find accommodation and work in Colombo, but we do not consider that these would be of such a level as to render her removal disproportionate.

184. For the above reasons:

The IJ materially erred in law.

The decision we substitute for his is to dismiss the appellant's appeal on asylum, humanitarian protection and human rights grounds.

Signed:

Dr H H Storey, Senior Immigration Judge

## APPENDIX A

**REASONS FOR THE DECISION THAT THERE IS AN ERROR OF LAW IN THE DETERMINATION [by SIJ SOUTHERN, 3 JANUARY 2008]**

1. Having found as a fact that the appellant had been subjected to serious harm in Sri Lanka at the hands of the authorities (see paragraphs 38 and 40 of the determination) the immigration judge was required to identify good reasons for considering that such serious harm would not be repeated: paragraph 339K of HC 395. His assertion at the end of paragraph 46 of his determination that he was satisfied that "the risk of that happening again is not a risk that can properly be categorised as real" was not sufficient. It was a material error of law for the Immigration Judge to dismiss the appeal on this basis.

2. It was a material error of law for the immigration judge to leave out of account, when assessing whether it would be unduly harsh to expect the appellant to re-establish herself in Colombo, the fact that, on his findings, the appellant had been detained and ill-treated by the authorities when travelling within Colombo in the past.

3. That being the case the decision of the Immigration Judge to dismiss the appeal cannot stand and the Tribunal must substitute a fresh decision to allow or to dismiss the appeal. The starting point for that reconsideration shall be the findings set out between paragraphs 32 – 40 of the determination of the Immigration Judge."

## APPENDIX B

**PRINCIPAL CASES ON SRI LANKA SINCE *LP (LTTE AREA – TAMILS – COLOMBO – RISK?) SRI LANKA* CG [2007] UKAIT 00076**

**European Court of Human Rights**

NA v United Kingdom (Application no. 25904/07) European Court of Human Rights, 17 July 2008

**Court of Appeal**

VS (Sri Lanka) [2008] EWCA Civ 271

R (on the application of AK) (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 447

R (on the application of RS) v Secretary of State for the Home Department [2009] EWCA Civ 688

**Administrative Court**

R (on the application of Sivanesan) v Secretary of State for the Home Department [2008] EWHC 1146

Veerasingam v Secretary of State for the Home Department [2008] EWHC 3044

R (on the application of Aruliraivan) v Secretary of State for the Home Department [2009] EWHC 30

R (on the application of SS (Sri Lanka)) v Secretary of State for the Home Department [2009] EWHC 223

R (on the application of Nirmalakumaran) v Secretary of State for the Home Department [2009] EWHC 1169

R (on the application of AS (Sri Lanka)) v Secretary of State for the Home Department [2009] EWHC 1763 (Admin)

R(on the application of Shanmugarajah) v Secretary of State for the Home Department [2009] EWHC 1888 (Admin)

R (on the application of B) v Secretary of State for the Home Department [2009] EWHC 2273 (Admin)

**Asylum and Immigration Tribunal**

AN & SS (Tamils – Colombo – risk?) Sri Lanka CG [2008] UKAIT 00063

# APPENDIX C

## BACKGROUND MATERIALS

| | Document | Date |
|---|---|---|
| | | |
| 1. | Disregard for Civilian safety appalling, Human Rights Watch (HRW) | 02.08 |
| 2. | Fear in the capital of Sri Lanka, BBC | 04.02.08 |
| 3. | Return of the dreaded white van, Sunday Leader | 10.02.08 |
| 4. | Sri Lankan civilian toll appalling, BBC | 13.02.08 |
| 5. | Petition against Vavuniya separation, BBC | 19.02.08 |
| 6. | Colombo station attack kills 11, BBC | 29.02.08 |
| 7. | Recurring Nightmare, HRW | 03.08 |
| 8. | Sri Lanka: 'Disappearances' by security forces a national crisis, HRW | 06.03.08 |
| 9. | Independent Panel resigns, International Herald Tribune (IHT) | 06.03.08 |
| 10. | Colombo, Sri Lanka, New York Times | 09.03.08 |
| 11. | Torture widely practiced in Sri Lanka, UN Rapporteur | 09.03.08 |
| 12. | Responses to Information Requests (National Identity Card), Immigration and Refugee Board | 08.04.08 |
| 13. | White van victims at CID TID | 20.04.08 |
| 14. | Deadly bomb kills 23, CNN | 25.04.08 |
| 15. | Woman dies under interrogation, TamilNet | 29.04.08 |
| 16. | Civil Volunteer Force in Action, Daily Mirror | 02.05.08 |
| 17. | Situation Report: After Muhamalai debacle, war on free media | 04.05.08 |
| 18. | No right to be there, Desmond Tutu | 15.05.08 |
| 19. | Police refuse to take action on rape of girls, Asian Human Rights Commission (AHRC) | 23.05.08 |
| 20. | Wikramanayaka stops one day service to obtain NIC, TamilNet | 26.05.08 |
| 21. | Don't visit Colombo, Mano Ganesan MP | 07.06.08 |
| 22. | SLA Army demands personal information from families in Vadamaraadchchi, TamilNet | 25.06.08 |
| 23. | Tens of thousands at risk, Amnesty International (AI) | 08.08 |
| 24. | Abducted in Batticaloa and escaped in Colombo, TamilNet | 07.08.08 |
| 25. | Abductee girl escapes in Vaazhaichcheanai, TamilNet | 12.08.08 |
| 26. | Letter BHC re: National Identity Cards in Sri Lanka | 18.08.08 |
| 27. | Tamils live in fear of forces, Associated Press (AP) | 31.08.08 |
| 28. | Civil Defence Force in action, Daily Mirror | 01.09.08 |
| 29. | 1200 Tamils in detention in Western Province, TamilNet | 02.09.08 |
| 30. | Outsiders quit Colombo, tells Defence Secretary, TamilNet | 13.09.08 |
| 31. | Security intensified after bus bombing in Sri Lanka, AP | 16.09.08 |
| 32. | Census to prevent LTTE attacks, Defence Secretary, Island | 21.09.08 |
| 33. | Lanka Govt to screen displaced Tamils, DAWN | 21.09.08 |
| 34. | Census Chaos, The Nation | 21.09.08 |
| 35. | Police order journalist not to film, Reuters | 21.09.08 |
| 36. | Obtaining an INC is tedious, Daily Mirror | 23.09.08 |
| 37. | Pain of Sri Lanka aid pullout, BBC | 23.09.08 |
| 38. | Tamils resent surveillance in capital, AFP | 24.09.08 |
| 39. | Bodies of arrested found, BBC | 10.10.08 |
| 40. | Sri Lanka Tamils 'being arrested', BBC | 10.15.08 |
| 41. | Police use registration details to arrest Tamils, Daily Mirror | 17.10.08 |
| 42. | Govt defends Tamil registrations, ABC | 17.10.08 |
| 43. | Abducted politician escapes torturers, BBC | 19.10.08 |
| 44. | Police uniform clad men abduct Tamil returnee from Korea, TamilNet | 27.10.08 |
| 45. | Prisoners in appalling conditions, Daily Mirror | 28.10.08 |
| 46. | Suicide bombers in the guise of pregnant women, beggars, etc | 07.11.08 |
| 47. | Political Prisoner to fast in Colombo, Anuradhapura, TamilNet | 09.11.08 |
| 48. | 74 Tamil political prisoners transferred to Magazine prison, TamilNet | 19.11.08 |
| 49. | End Detentions & Aid restrictions, HRW | 12.08 |
| 50 | 7 deserters escape from army custody, TamilNet | 01.12.08 |