

Comments on the Australian Government Department of Foreign Affairs and Trade's (DFAT) Country Information Report on Sri Lanka of 4 November 2019

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About ARC

Asylum Research Centre Foundation (ARC) is a UK charity working to improve standards in refugee determination procedures by ensuring that decision makers have access to high quality Country of Origin Information (COI).¹ ARC Foundation specialises in the production and use of COI and the promotion of COI research standards and methodologies.

ARC provides country reports to support individual asylum claims for use in representations to the UK Home Office, the UK Immigration and Asylum Chambers and to international refugee decision making bodies.

In [AK](#), the Tribunal determined that “there may be a useful role in country guidance cases for reports by COI (Country of Origin) analysts/consultants” such as ARC (headnote A (iv) and para. 178) and considered that ARC consultants have the “relevant skills and experience to undertake this work” (para. 178).

ARC has produced COI reports on over 27 countries available on our [website](#), including commissions from the UN Refugee Agency (UNHCR) and provided COI research for the following Country Guidance (CG) cases:

- [AAR & AA \(Non-Arab Darfuris - return\) Sudan \[2019\] UKUT 282 \(IAC\) \(7 August 2019\)](#)
- [BA \(Returns to Baghdad Iraq CG\) \[2017\] UKUT 18 \(IAC\) \(23 January 2017\)](#)
- [CM \(EM country guidance; disclosure\) Zimbabwe CG \[2013\] UKUT 59 \(IAC\) \(31 January 2013\)](#)
- [HM and others \(Article 15\(c\)\) Iraq CG \[2012\] UKUT 00409\(IAC\) \(13 November 2012\)](#)
- [AK \(Article 15\(c\)\) Afghanistan CG \[2012\] UKUT 00163\(IAC\)\(18 May 2012\)](#)
- [AA \(unattended children\) Afghanistan CG \[2012\] UKUT 16 \(IAC\) \(01 February 2012\)](#)

ARC is currently involved in a number of projects that promote COI methodological standards. We review COI produced by the UK Home Office in their Country Policy and Information Notes and by the European Asylum Support Office (EASO) and advocate for improvements in the quality of these products. ARC consultants have also undertaken several reviews of UK Home Office COI products for [the Independent Advisory Group on Country Information](#) which works on behalf of the UK Independent Chief Inspector of Borders and Immigration. With our project partner Asylos, we are producing a series of ‘strategic’ reports that aim to address COI gaps that frequently act as barriers to protection for young people claiming asylum in the UK. These reports combine available COI with new information generated by conducting interviews with individuals who are knowledgeable about the topic in question. In further collaboration with Asylos we have developed a COI training module that we are currently delivering to legal representatives in the UK. ARC also provides a bi-monthly [COI Update](#) for subscribers and moderates the international [COI Forum](#).

Further information about ARC’s activities are available in our [2019 Annual Report](#).

¹ Asylum Research Centre was set up in 2010 and ARC Foundation was incorporated as a registered charity in 2016.

Introductory remarks on ARC's COI methodology

ARC conducts research in accordance with the standards and principles laid down by the European Union [Common EU Guidelines for Processing Country of Origin Information](#), the Austrian Red Cross/Austrian Centre for Country of Origin Information and Asylum Documentation (ACCORD) [Researching COI Training Manual-2013 Edition](#), and the International Association for Refugee Law Judges [Judicial Criteria for Assessing Country of Origin Information](#).

ARC is internationally recognised as a source of expertise on COI methodologies. ARC has been actively engaged in commenting on the European Asylum Support Office's (EASO) COI Methodology and by highlighting methodological concerns thereof in 15 public commentaries on EASO COI products.² We have also been contracted to provide comments on EASO COI products prior to publication.³ ARC was actively involved in EASO's consultative process on its revised June 2019 COI Methodology, including submitting written comments and attending the conference in which it was discussed. ARC sits on EASO's Reference Group on 'Practical Tools for the use of Country of Origin Information by the case officers' for which we undertook a detailed review.

We also peer-reviewed the 2013 edition of the Austrian Red Cross/ACCORD European Asylum Curriculum Training Manual ['Researching COI'](#), which is used for training COI researchers and European decision-makers. ARC participated in a 2012 International Association of Refugee Law Judges roundtable to discuss best practice around the procedural aspects of the use and role of COI in asylum related cases and has led several international conference workshops on this issue. We also promote adherence to COI standards through our development of a COI handbook and delivery of COI training for legal representatives.

ARC's methodological approach when producing COI reports is to promote transparency with respect to selection of sources as far as possible. We devise a list of relevant sources on the country in question which are clearly set out in each report's *Explanatory Note*. This is to enable users to conduct further research and to conduct their own source assessments. Over the past 13 years of specialist work on COI, ARC has developed a [thematic sources database](#), which we use to inform the selection and validation of the sources we use in our COI research. We then consult the list of sources within a set timeframe on the issues listed in the terms of reference. For example in our January 2020 report on [Darfur](#), over 180 organisations, 12 news sources and five databases that report on Sudan were consulted for relevant publications documenting events between 2nd December 2018 and 10th December 2019. To aid transparency, direct quotes are used in our reports and every sentence is referenced with a traceable link.

This is the same approach adopted in our 'strategic' COI reports, the detailed methodology for which can be viewed in each product of this series, see for example [Albania: Trafficked Boys and Young Men](#). This methodology also sets out our approach for conducting interviews with a range of interlocutors including: rationale for identifying interviewees; finalising terms of reference and interview questions; instructing interviewees; conduct of interview and citing the interviews. At the outset, the interviewees' preferred level of anonymity and confidentiality is guaranteed through an agreement and interlocutors are sent an [Information sheet for interviewees](#). The full transcript of each interview is provided in the final report once signed off by the interviewee, including the questions posed, although should the interviewee wish certain excerpts to be made anonymous, they will be cited as such in the body of the report and not included in the appended full transcripts. Relevant excerpts from the interviews are presented under the corresponding research headings in

² Available at <https://asylumresearchcentre.org/publications/>

³ E.g. peer-review undertaken for: EASO, [Afghanistan: Security Situation](#), April 2019

the report alongside the COI research. A draft of the full report is sent to the interviewees detailing how they have been cited for sign off. Once the report is published, interviewees can no longer withdraw but we will be able to make additions by issuing addendums, should they wish to provide more up to date sources or information which was not previously available to them.

General methodological observations on the DFAT Country report on Sri Lanka

From a COI methodological standpoint, it is considered that the Australian Government Department of Foreign Affairs and Trade (DFAT) reports diverge from some of the accepted principles and standards of COI i.e. relevance, reliability, balance, neutrality, accuracy, currency, traceability and transparency.

Reliability, balance, transparency and accuracy

The website of DFAT gives a brief overview of its Country Information Report methodology, noting that (emphasis added):

[DFAT, County Information Reports, undated \[accessed 29 June 2020\]](#)

Country Information Reports are prepared by the Department of Foreign Affairs and Trade (DFAT) for protection status determination purposes only. They provide DFAT's **best judgment and assessment** at time of writing and are distinct from Australian Government policy with respect to the countries in question.

The reports provide a general, rather than an exhaustive country overview. They are prepared with regard to the current caseload for decision makers in Australia without reference to individual applications for protection visas. **Reports do not contain policy guidance for decision makers.**

Ministerial Direction Number 84 of 24 June 2019 under s 499 of the Migration Act 1958 states that:

Where the Department of Foreign Affairs and Trade has prepared [a] country information assessment expressly for protection status determination purposes, and that assessment is available to the decision maker, the **decision maker must take into account that assessment**, where relevant, in making their decision. The decision maker is not precluded from considering other relevant information about the country.

Reports take into account **relevant and credible open source reports, as well as information obtained on the ground.**

It is noted that this methodology provides for DFAT's "best judgement and assessment" and that domestic legislation sets out that such assessments must be taken into account by the decision maker, but that reports "do not contain policy guidance for decision makers". It is therefore not fully clear what such an 'assessment' entails. As detailed below, there is inconsistent use of such 'assessments' throughout the November 2019 DFAT Sri Lanka Country Report (hereafter the DFAT Sri Lanka report).

In addition, the DFAT Sri Lanka report explains that the following terms are used:

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] GLOSSARY

[...] high risk DFAT is aware of a strong pattern of incidents

moderate risk DFAT is aware of sufficient incidents to suggest a pattern of behaviour

low risk DFAT is aware of incidents but has insufficient evidence to conclude they form a pattern [...]

As 'risk' has a particular connotation in asylum law (real risk of persecution), these are rather surprising terms to use for "assessments" which are not supposed to comprise policy conclusions, as also highlighted in the DFAT's own overview of its methodology (see excerpt further above). It is also not made clear what level of risk a profile would need to be assessed at in order to be granted refugee status. We will return to this distinction when discussing particular sections of the Sri Lanka country report further below.

The general methodology also provides for the citation of publicly available reports, as well as “information obtained on the ground”, without indicating who these sources might be. See below for further information on this point.

Within each country report itself, further information on its methodology is provided. The DFAT Sri Lanka report states with regards to its ‘purpose and scope’:

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] Purpose and Scope

1.1 This Country Information Report has been prepared by the Department of Foreign Affairs and Trade (DFAT) for protection status determination purposes only. It provides DFAT’s **best judgement and assessment** at time of writing and is distinct from Australian Government policy with respect to Sri Lanka.

1.2 The report provides a general, rather than an exhaustive, country overview. It has been prepared with regard to the current caseload for decision makers in Australia without reference to individual applications for protection visas. **The report does not contain policy guidance for decision makers.**

1.3 Ministerial Direction 84 of 24 June 2019 under section 499 of the Migration Act 1958 states that: Where the Department of Foreign Affairs and Trade has prepared [a] country information assessment expressly for protection status determination purposes, and that assessment is available to the decision maker, the decision maker must take into account that assessment, where relevant, in making their decision. The decision maker is not precluded from considering other relevant information about the country.

1.4 This report is informed by DFAT’s on-the-ground knowledge and discussions with a range of sources in Sri Lanka. It takes into account relevant and credible open source reports, including those produced by: the US Department of State, the UK Home Office, the World Bank and the International Monetary Fund; relevant UN agencies, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA) and the International Organization for Migration (IOM); leading human rights organisations such as Human Rights Watch, Amnesty International and Freedom House; **Sri Lankan non-governmental organisations (NGOs); and reputable news organisations. Where DFAT does not refer to a specific source of a report or allegation, this may be to protect the source.**

1.5 This updated Country Information Report replaces the previous DFAT report released on Sri Lanka published on 23 May 2018. [...]

This ‘purpose and scope’ restates the same methodological points as found on DFAT’s website whilst providing further details with respect to the sources that have been consulted. The DFAT Sri Lanka report notes that it “takes into account relevant and credible open source reports” and lists some which it considers falls within this category.

Two government departments are listed (US Department of State, the UK Home Office), two inter-governmental organisations (the World Bank, IOM), numerous UN institutions or agencies (IMF, OHCHR, UNHCR, UNDP and UNFPA), leading human rights organisations (Human Rights Watch, Amnesty International, Freedom House). However, no examples are provided for “Sri Lankan NGOs” or “reputable news organisations”. This makes it very difficult for the reader to assess which information actually informed the Sri Lanka country report. To illustrate, the following are the only citations of the human rights organisations mentioned in the whole report (emphasis added):

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] Easter Sunday terrorist attacks and aftermath of anti-Muslim violence

[...] 3.36 Refugees and asylum seekers from South Asia were also threatened after the Easter Sunday terrorist attacks. According to **Human Rights Watch and Amnesty International**, 1,100 mostly-Muslim refugees and asylum seekers – primarily from Pakistan and Afghanistan – were evicted from their homes in Negombo following pressure on their landlords by local residents. DFAT understands those

affected received assistance from UNHCR and protection from the Sri Lankan police and army. Some were temporarily accommodated in a rehabilitation centre in the Northern Province used to rehabilitate former LTTE members (see Rehabilitation). [...]

DEATH PENALTY [...]

4.13 According to Sri Lanka's Department of Prisons, 168 death sentences were imposed in 2018 (162 male; 6 female). According to **Amnesty International**, as of December 2018, 1,299 prisoners were on death row (1,215 male; 84 female). Of those currently on death row, 84 were convicted of drug offences.

It is not clear if Amnesty International and Human Rights Watch reports informed any other sections of the report, or just these. Moreover, despite Freedom House being mentioned in the 'purpose and scope' as amongst the sources that might be taken into account, it is not cited at all in the DFAT Sri Lanka report. Given the DFAT Sri Lanka report's referencing style, it is not possible to ascertain whether it was consulted and not mentioned, or not consulted at all. It is considered best practice for transparency, if COI reports include a bibliography of all sources consulted and within which timeframe. Moreover each sentence should be accurately referenced and it be made clear if information is directly quoted, summarised COI or an interpretation/assessment of COI.

This is important for the intended users of the DFAT Sri Lanka report, first instance refugee decision-makers, given that legislation provides that decision maker "is not precluded from considering other relevant information about the country". It is a challenging task for decision makers to identify what other relevant information might be, if they don't know what has already informed the relevant DFAT country report. It is considered that this undermines the accuracy and transparency of all DFAT reports.

The 'purpose and scope' makes clear that the report is also "informed" by "DFAT's on-the-ground knowledge and discussions with a range of sources in Sri Lanka". With regards to the "range of sources", no information is provided as to the type of sources with whom DFAT may have held such discussions i.e. whether diplomatic, intergovernmental, NGO, media or individuals (such as activists, representatives of think tanks/research institutes or academic etc). It is therefore not clear how many such discussions there were and with whom, or whether these were undertaken for the specific purpose of the DFAT Sri Lanka report. No further methodological details of such discussions are mentioned. That is, as no transcripts of discussions are provided, it is unclear what the terms of reference was for engaging, when and where the interview took place, whether all interlocutors were asked the same questions, what these questions were, or whether interviewees signed off their responses. It is also not clear whether there was convergence or disagreement between the interlocutors on the various issues. Whilst we appreciate that sensitive or personal security concerns may preclude DFAT from publishing full transcripts (which would be preferable in order to promote transparency), in our view not publishing at least the interview questions undermines the transparency of the DFAT Sri Lanka report as users are unable to see the nuance of how questions are framed. It is considered that this further undermines transparency.

Moreover, the fact that the report is informed by "DFAT's on-the-ground knowledge" seems to imply that this would be from 'Embassies, High Commissions, Consulates, multilateral missions and representative offices' given that this is how DFAT is represented abroad, according to its website.⁴ For Sri Lanka, this is listed as the Australian High Commission.⁵ The transparency of the DFAT Sri Lanka report would have been greatly improved had this been clarified. To note an international comparison, when the UK Home Office's Country Policy and Information Notes cite letters from embassies and consulates, these are clearly referenced as such, and usually appended in full to the documented, redacted where necessary.

⁴ DFAT, [About Us](#), undated [accessed 29 June 2020], *Our locations*

⁵ DFAT, [Our embassies and consulates overseas](#), undated [accessed 29 June 2020], *Sri Lanka*

Moreover, when detailing the types of sources, DFAT mentions that it takes into account “relevant and credible open source reports”, not explaining how a source might meet this definition, apart from listing some isolated examples. It is observed that on occasion the DFAT Sri Lanka report has described a source as credible without disclosing any further details about this source or how it came to this assessment [emphasis added]:

DFAT, Country Report: Sri Lanka, 4 November 2019

[...] Monitoring of former LTTE members

3.75 Some Tamils with imputed LTTE links (including those who fought for the LTTE or were part of its civilian administration) continue to report police monitoring and harassment. Multiple sources in the north told DFAT that former LTTE members, including those considered low-profile, are monitored to guard against the LTTE’s re-emergence, although monitoring today is less extensive and takes a more subtle form. **A source that DFAT considers credible** claimed the extent of monitoring depends on one’s former seniority within the LTTE; ongoing involvement with politically-sensitive issues, including protests relating to disappeared persons; and links to the Tamil diaspora, particularly elements of the diaspora considered radical by the Sri Lankan Government. Former LTTE members that fit this profile are more likely to be monitored by the authorities. In contrast, those who maintain a low-profile are considered less vulnerable to monitoring. [...]

Returnees from Tamil Nadu

[...] According to a UNHCR survey, over 90 per cent of returnees from Tamil Nadu felt either generally or completely safe in Sri Lanka. **Credible sources** were not aware of returnees from Tamil Nadu being subjected to monitoring or harassment by the authorities. [...]

Sexual Orientation and Gender Identity

[...] 3.151 According to local sources, the LGBTI community faces threats, harassment and forced heterosexual marriage from family and members of the community. Some middle and upper class, educated and urban Sri Lankans are open about their sexuality within their family and community circles; however, risks are higher for lesbian and bisexual rural women due to more traditional familial expectations and values. **DFAT considers reports of violence in the home and public spaces to be credible**, and many LGBTI individuals – especially Muslims – hide their identity to avoid harassment. [...]

[...] TORTURE

[...] 4.23 [...] **DFAT assesses that reports** of torture carried out by Sri Lankan military and intelligence forces during the war and in its immediate aftermath **are credible**; however, DFAT is unable to verify allegations of torture since 2016. Local sources told DFAT they were not aware of recent cases of former LTTE members being subjected to torture. [...]

It is considered that best practice would be to detail why the source was credible. Where sources could not be disclosed for security reasons, it could at least be mentioned which type of source the information came from or what experience the viewpoint was based on, as well as what made it more or less credible in DFAT’s assessment over other sources referred to or consulted for the report. To take a comparison, the report of the UK Fact-Finding Mission to Sri Lanka⁶ refer to broad descriptions to guarantee anonymity such as ‘a diplomatic source’ or ‘Journalist 1’.

Currency

A distinct time frame for research has not been provided for the report, which in our view potentially undermines the currency of the information. The ‘purpose and scope’ states that the DFAT Sri Lanka report, published on 9 November 2019 replaces the previous DFAT report on Sri Lanka published on 23 May 2018. However, it is not clear if this means that the report only includes information after this date, or what the cut-off date for research was. The latter would be important to note as usually there is a delay between finishing research and publication whilst a report is

⁶ UK Home Office, [Report of a Home Office fact-finding mission to Sri Lanka Conducted between 28 September and 5 October 2019](#), 20 January 2020

signed off. In this way, users of the report are unable to clearly identify which information was published after the cut-off date and therefore wasn't used to inform the relevant DFAT report.

Accuracy, balance, traceability and transparency

No references are provided in the DFAT Sri Lanka report at all and no source has been directly quoted. This renders it very difficult for a reader to identify what is COI, what is summarised COI and what is an interpretation of information by DFAT. In our view this compromises several of the principles of COI research; that information is accurate, traceable and transparent.

On limited occasions, information is attributed to a particular source. For example (emphasis added):

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] ECONOMIC OVERVIEW

2.9 The World Bank classifies Sri Lanka as an upper middle-income country. Gross national income on a per capita basis was USD4,102 in 2018. Sri Lanka's economy has expanded significantly since the end of the war. Spurred by post-war reconstruction efforts, large infrastructure projects and an increase in tourism, the economy grew at an average rate of 5.8 per cent between 2010 and 2017. The pace of growth has since slowed, owing to prolonged drought conditions in many parts of the country, monsoon floods in 2017 and 2018, rising inflation, sluggish reform implementation and political instability. The economy grew by 3 per cent in 2018 — its slowest expansion in 17 years. **The IMF projects growth of 3.5 per cent in 2019 and 4 per cent in 2020**, although the terrorist attacks of April 2019 have impacted negatively on Sri Lanka's tourism sector and will affect future growth prospects. [...]

However, in the first highlighted example, as the World Bank publication is not cited, it is not clear when the organisation made this classification, which undermines the accuracy and transparency of the information.

In general, however, no sources are attributed to particular sections of the report. As it is not clear what source has been relied upon for each statement in the report, it is not possible to trace the reliability, currency or accuracy of the information. To take the following paragraph, there is no mention of sources at all:

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] 3. REFUGEE CONVENTION CLAIMS

[...] RACE/NATIONALITY

[...] Tamils

Monitoring, harassment, arrest and detention

3.10 Many Tamils, particularly in the north and east, reported being monitored, harassed, arrested or detained by security forces during the war. While LTTE members and supporters were almost all Tamil, security forces also imputed LTTE support based on ethnicity, and emergency regulations were, at times, applied in a discriminatory manner (see Political Opinion (Actual or imputed)). [...]

This means that it is not possible for the reader to assess the information included, or to be able to ascertain when a situation might be superseded by more recent events or new evidence. Moreover, by not citing sources of information it is not possible for the reader to assess whether a well-balanced range of sources have been consulted on a particular issue, essential for neutrality. Again, it is not possible to identify whether information was corroborated by other sources and where the commonalities or divergences in opinion may lie.

Interestingly the 'purpose and scope' states that "Where DFAT does not refer to a specific source of a report or allegation, this may be to protect the source". This implies that it's DFAT's general

practice to attribute reports to particular sources, which a reading of the DFAT Sri Lanka report shows is not to be the case. The following is an example of where undisclosed sources are referred to:

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] 3. REFUGEE CONVENTION CLAIMS

[...] RACE/NATIONALITY

[...] Tamils

[...] 3.12 **Communities in the north and east report** that monitoring is undertaken by military intelligence and the Police Criminal Investigation Department, though in many cases officers dress in plain clothes and do not identify themselves. **According to local sources**, those participating in public gatherings and protests are often photographed. In the east, local informants within the community (including neighbours and business owners) reportedly undertake monitoring on behalf of the authorities. Intelligence agencies also monitor links to foreign groups, including some in the Tamil diaspora.

It is considered that best practice would be to detail which information was gleaned from which particular source. Where sources could not be disclosed for security reasons, it could at least be mentioned which type of source the information came from. As mentioned above, the DFAT Sri Lanka report could have referred to broad descriptions to guarantee anonymity such as ‘a diplomatic source’ or ‘Journalist 1’ as the UK Fact-Finding Mission to Sri Lanka⁷ did.

[Blurring of COI and assessments](#)

A key principle of COI is that it is information and is distinct from country guidance or legal/risk assessments.⁸ In our view, State functions producing COI should be distinct from those producing COI guidance documents as well as from decision-makers and we have consistently advocated for this. Where the COI research and COI assessments are combined into one product, they should be clearly distinguished so that users are able to gauge what is information and what is guidance. For example the UK Home Office Country Policy Information Notes do this, dividing these documents into sections entitled ‘Assessment’ and ‘Country information’. In this way the Country Policy Information Notes appropriately reflect that the guidance therein is only that and cannot properly be considered as country information. That is not to say that the guidance is also not open to critique. The DFAT reports do not provide such a clear demarcation and therefore the lines between COI and assessments thereof are blurred.

As mentioned above, the ‘Glossary’ section explains the usage of the following language, which could be read to imply as providing legal assessments:

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] GLOSSARY

[...] high risk DFAT is aware of a strong pattern of incidents

moderate risk DFAT is aware of sufficient incidents to suggest a pattern of behaviour

low risk DFAT is aware of incidents but has insufficient evidence to conclude they form a pattern [...]

Typically if a risk assessment is provided in the DFAT Sri Lanka report, it is included in the last paragraph of a subsection. To exemplify (emphasis added):

⁷ UK Home Office, [Report of a Home Office fact-finding mission to Sri Lanka Conducted between 28 September and 5 October 2019](#), 20 January 2020

⁸ See: European Union, [Common EU Guidelines for Processing Country of Origin Information](#), April 2008, 1.3 *Scope of the COI Guidelines p.2*; Austrian Red Cross/ACCORD, [Researching COI Training Manual](#), 2013, 1.5.2 *Limits of COI, p.27*; European Asylum Support Office, [Country of Origin Information \(COI\) Report Methodology](#), June 2019, *Introduction p.5*

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] Muslim women

3.145 DFAT assesses that Muslim women in Sri Lanka **face a high risk of official discrimination** in relation to personal status, as a result of the provisions of the MMDA and its implementation. DFAT also assesses that Muslim women who advocate for equitable rights **face a moderate risk of societal discrimination** from within the Muslim community. [...]

However, a 'risk assessment' using these categorisations is not used to assess the risk of every profile addressed in section 3 of the DFAT Sri Lanka report *Refugee Convention Claims*. For example the section on *Civil society organisations and government critics* provides DFAT assessments, but these are not 'risk' assessments (emphasis added):

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] Civil society organisations and government critics

3.108 A broad range of NGOs and civil society groups are active in Sri Lanka. NGOs are required to register with the National Secretariat for NGOs. Some 1,500 NGOs were registered at the national level in 2019. **DFAT assesses that**, under the previous Rajapaksa Government, NGOs and their staff, especially those working on human rights issues, risked official harassment, including arrest or abduction, while performing their duties. [...]

3.110 [...] **DFAT assesses** that the post-2015 Sri Lankan Government has tolerated political dissent more than the former government, but some limits still apply. [...]

For some profiles, 'likelihood' of a practice is mentioned, but again, the unclear language renders it difficult to isolate what is a DFAT assessment and what is a summary of COI (emphasis added):

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] Former LTTE members living outside Sri Lanka

3.82 The Sri Lankan Government has encouraged all Sri Lankans living overseas to return or invest in the Sri Lankan economy. DFAT assesses Sri Lankan authorities may monitor members of the Tamil diaspora returning to Sri Lanka, depending on their risk profile. Those who hold leadership positions in Tamil diaspora groups, particularly groups deemed by the Sri Lankan Government to hold radical views; those who were formerly part of the LTTE, particularly in – but not necessarily limited to – high-profile roles; those who are suspected of raising funds for the LTTE during the war; and **those who actively advocate for Tamil statehood would likely be of particular interest to the authorities**. Those Tamils living abroad with links to the LTTE are unlikely to return to Sri Lanka voluntarily. [...]

For other profiles, no assessment nor categorisation of risk is provided. For example the section on persons with disabilities states (emphasis added):

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] Persons with disabilities

3.167 According to the 2012 census, 8.7 per cent of Sri Lanka's population identifies as disabled. A significant proportion of those considered disabled are former LTTE members who sustained injuries during the war. The law forbids discrimination against any person with physical, sensory, intellectual or mental disabilities in employment, education, health care, public transportation and air travel. Administrative Circular No. 27/88, issued in 1988, sets a 3 per cent quota for employment of persons with disabilities in the public service.

3.168 **In practice, persons with disabilities experience discrimination in accessing employment, education, justice and health services. Women with disabilities are particularly vulnerable.** Most public buildings and public transport are not accessible for persons with disabilities. Children with disabilities attend school at a lower rate than other children. Support services for persons with disabilities are widely considered inadequate, particularly in the case of former LTTE members. Sources told DFAT that, while they received some support from NGOs, former LTTE members with

disabilities received little support from the state. Female former LTTE members with disabilities face difficulty finding employment and, according to one local source, are ostracised by society. [...]

Here, the DFAT Sri Lanka report asserts that “persons with disabilities experience discrimination in accessing employment, education, justice and health service” but does not indicate that this is a DFAT assessment. As no sources are cited, it is therefore not clear whether this is a summary of publicly available sources, or DFAT’s assessment thereof.

For other profiles, DFAT doesn’t make an assessment but explains its view of the evidence:

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] Conditions for women in the north and east

[...] 3.131

[...] **DFAT is aware of** reports of women living near military bases, particularly single women, reporting sexual harassment by military personnel. **DFAT is unable to verify these claims.** One local source told DFAT that sexual harassment in these circumstances was not prevalent. [...]

In other sections, ‘assessments’ from other organisations are provided, though potentially these sources would not define their reporting as such. For example:

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] Deaths in Custody

4.10 The Department of Prisons reported 50 deaths of prisoners in custody in 2017 (the most recent period for which data are available). **The US Department of State assesses that** most deaths in custody are due to natural causes, and **the 2016 report of the UN Special Rapporteur on torture assessed that** the forensic procedures and expertise relating to deaths in custody were adequate. Well-placed local sources were not aware of recent deaths in custody beyond deaths from natural causes.

4.11 The Asian Human Rights Commission reported nine extrajudicial killings in police stations and prisons from January to October 2017. The US Department of State reported two extrajudicial killings in 2016. In September 2016, the family of a man who died in custody disputed police claims of suicide. Following this incident, the Minister for Law and Order committed to installing cameras in prison cells. DFAT understands cameras operate in the Police Criminal Investigation Department and Terrorism Investigation Division, but is not aware of cameras having been installed in prison cells. In February 2017, five prisoners and two wardens

In this and other examples, DFAT doesn’t provide its own assessment, just reports those of other organisations.

The use of risk assessments and other DFAT assessments is inconsistent throughout the DFAT Sri Lanka report. It is considered that this renders it difficult for the reader to identify what is a DFAT position statement and what is COI. This is made all the more difficult by DFAT infrequently attributing COI to particular sources and its absence of referencing. In our view therefore, the DFAT Sri Lanka report does not adhere to the principles of COI and is better understood as DFAT’s opinion/position on the issues addressed.

[Terms of reference and peer-review](#)

The DFAT Sri Lanka report neglects to mention how its terms of reference was devised nor whether the reports undergo any peer review process. Both UK Home Office and EASO COI products have a peer-review process, which is considered best practice.

Section-specific observations on the DFAT Country report on Sri Lanka

2. Background Information

Economic Overview, Economic conditions in the north and east

Methodological observations

Country information has been presented as assertions without any reference to specific source material included in the body of the text or in footnotes.

Content-specific observations

Whilst the DFAT Sri Lanka report described land confiscation at the end of the civil war and land restitution in recent years, it neglected to include information of harassment and violence directed against those protesting against land seizures and the slow progress of returning land confiscated during and after the civil war:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 2. Background Information [...]

Economic Overview [...]

Economic conditions in the north and east [...]

2.19 [...] While the government has overseen the return of most land occupied by the military during the war, the military continues to occupy some fertile farming land in the north and restricts access to some fishing areas (see Security situation in the north and east). [...]

Security situation [...]

Security situation in the north and east [...]

2.66 The military appropriated substantial amounts of private- and state-held land in the Northern and Eastern provinces during and after the civil war in order to establish bases and associated buffer zones (known as 'High Security Zones'). As part of the government's transitional justice efforts, President Sirisena pledged to return all land appropriated by the military in the north and east by the end of 2018. While there has been significant progress on land return, Sirisena's pledge had not been met at the time of publication. According to the Sri Lankan Government, as of 2 April 2019, 89,263 acres (or more than 75 per cent) of land held by the military had been released, including 5,797 acres in 2018.

2.67 Incremental land returns continue, although there have been issues with how some land has been released. For example, in some cases farmers have been returned their land but not their houses, and fishermen have been returned their land but denied access to the ocean. The government has committed to pay compensation where land is not returned for national security reasons. DFAT understands the military retains sole decision-making authority on which land to return and how people should be compensated. Sources told DFAT that the military continued to hold land considered economically valuable, including for

fishing and farming purposes. According to the OHCHR, as at 30 September 2018, the military retained 17,793 acres in the Northern Province (4,162 acres of which was private land) and 12,520 acres in the Eastern Province (of which 131 acres was private land). According to military sources, only 1.37 per cent of the land in the Jaffna Peninsula is occupied by the military today. Official sources attributed delays in releasing remaining land to the complexity and financial cost associated with closing existing bases and relocating military personnel elsewhere. The government and the military say they remain committed to land return [...]

Information available in the public domain at the time of drafting the DFAT Sri Lanka report found that property had been destroyed before it was returned, that new land seizures occurred, and that protesters against the continued land confiscation faced harassment and threats:

[UN Office of the United Nations High Commissioner for Human Rights, Promoting reconciliation, accountability and human rights in Sri Lanka, Report of the Office of the United Nations High Commissioner for Human Rights, 8 February 2019](#)

[...] III. Developments in reconciliation and accountability [...]

C. Preconditions for transitional justice and confidence-building measures [...]

35. [...] There have also been cases of property being destroyed shortly before it was to be returned. Furthermore, communities have complained about new land grabs and other contentious land issues, such as alleged “colonization” through the establishment of irrigation, forestry and archaeological projects, and of continued military involvement in economic activities. Such situations prevent the resumption of livelihoods, unlike what was encouraged by the Human Rights Council in its resolution 30/1 [...]

[Thomson Reuters Foundation News, Sri Lankan Tamil women fight for land a decade after war ends, 3 March 2020](#)

Women whose land was seized by the army during a long-running war are protesting to have their ancestral homes returned [...]

Jasinthan has been summoned to court several times - including the day after her husband died - because of the protests. She said she has received threats, and has installed security cameras at her home and acquired a pair of guard dogs.

[INFORM, Repression of Dissent in Sri Lanka 1st January – 31st March 2019, 9 May 2019](#)

[...] Executive Summary [...]

Out of Sri Lanka’s nine provinces, the Tamil majority Northern Province was where most threats and obstructions to activism were reported, with more than half the incidents in this report having occurred there. The Tamil families of the disappeared and those protesting for the return of their land faced the most adversity in the form of acts meant to intimidate and cease protests [...]

A. Threats and Obstructions to Activism in the North

Activism in the North has met with comparatively (to the rest of the country) subtle but considerable and sustained repression [...] and, the Navy attempted to arbitrarily prevent activists from visiting Iranaitivu, where locals had recently regained access to their land after more than 25 years. In separate incidents, land rights protests at Keppapulavu were heavily surveilled by the armed forces on what appeared to be official cameras and by individual personal phones, presumably to intimidate the protesters [...]

[ACLED, Regional Overview – Asia, 29 July 2019](#)

[...] In Sri Lanka, communal tensions between the Tamil and Sinhalese community heightened last week following the destruction of a Hindu temple at Kanniya town in Trincomalee to make way for a Buddhist vihara (temple or monastery). Protests by hundreds of Tamils were met with police force as well as violence by Sinhalese traders [...]

2. Background Information

Security situation, Security situation in the north and east

Methodological observations

Country information has been presented as assertions without any reference to specific source material included in the body of the text or in footnotes, with the following exceptions (emphasis added):

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] Security situation [...]

Security situation in the north and east [...]

2.67 Incremental land returns continue, although there have been issues with how some land has been released. For example, in some cases farmers have been returned their land but not their houses, and fishermen have been returned their land but denied access to the ocean. The government has committed to pay compensation where land is not returned for national security reasons. DFAT understands the military retains sole decision-making authority on which land to return and how people should be compensated. Sources told DFAT that the military continued to hold land considered economically valuable, including for fishing and farming purposes. **According to the OHCHR**, as at 30 September 2018, the military retained 17,793 acres in the Northern Province (4,162 acres of which was private land) and 12,520 acres in the Eastern Province (of which 131 acres was private land). According to military sources, only 1.37 per cent of the land in the Jaffna Peninsula is occupied by the military today. Official sources attributed delays in releasing remaining land to the complexity and financial cost associated with closing existing bases and relocating military personnel elsewhere. The government and the military say they remain committed to land return [...]

2.69 **A senior police officer told the Sri Lankan media** in October 2018 that gang violence was occurring in only four of 53 police areas in the Northern Province, and that most of these incidents were between rival gangs. According to local media reporting, the police launched special operations to eliminate the Aava gang in October 2018. Local sources told DFAT that the police regularly stopped cars in Jaffna to check for swords and that crime levels in the north had fallen with the increase in security since the 2019 Easter Sunday terrorist attacks [...]

Moreover, this section of the DFAT Sri Lanka report also includes some vague source descriptions:

- “According to military sources...” (para. 2.67),
- “Official sources...” (para. 2.67),
- “According to local sources...” (paras. 2.68, 2.73)
- “Multiple local sources...” (2.68)
- “According to local media reporting...” (para. 2.69)
- “Local sources told DFAT...” (paras. 2.69, 2.73)

By sometimes using no source attributions or description (e.g. “Sources told DFAT...”) and other times vague source descriptions or referring to specific source material, it may be inferred that the DFAT Sri Lanka report suggests that some sources have more veracity than those sources without a description.

In the following example the DFAT Sri Lanka report states that it is unable to verify a claim made in November 2016 by the then Health Minister and Cabinet Spokesperson on the origins of the Aava gang [emphasis added]:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] Security situation [...]

Security situation in the north and east [...]

2.68 According to local sources, the Aava gang is active in Jaffna and other parts of the Northern Province. The Aava gang mostly comprises young Tamil men. Its size is unknown. Police attributed a spike in criminal activity in Jaffna in recent years, including sword attacks and robberies, to the group and arrested many of its members, including its purported leader, Kumareswaran Vinodan. **The Aava gang’s origins are disputed. In November 2016, then-Health Minister and Cabinet Spokesperson Dr Rajitha Senaratne claimed the Aava gang was a war-time creation of the military as a counter-insurgency tool against the LTTE and was being used to justify a large ongoing security presence in Tamil areas in the post-war period. DFAT is unable to verify these claims.** Multiple local sources told DFAT that members of the Aava gang were influenced by characters in Tamil gangster movies, who they tried to imitate, and dismissed purported links to the military [...]

It is unclear why this statement was included, as in the previous sentence it was stated that the Aava gang's origins "are disputed". It also emphasises the previously made observation that it could be inferred that the DFAT questions the assertions of the then Health Minister.

Content-specific observations

The DFAT Sri Lanka report states that the Sri Lankan government remained committed to land return:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] Security situation [...]

Security situation in the north and east [...]

2.67 [...] The government and the military say they remain committed to land return [...]

Yet, information found in the public domain at the time of drafting the DFAT Sri Lanka report stated that the Sri Lankan government was keeping land on the grounds of "national security":

[Journalists for Democracy in Sri Lanka, Sri Lanka refuses to hand back military occupied land, 22 March 2019](#)

[...] Scores of war displaced Tamil families have been protesting for more than two years by the wayside opposite sprawling camps built over their traditional lands demanding the military to vacate. Their land "would continue to be held by the security forces" Sri Lankan foreign minister adamantly told the UN rights body reviewing the country's human rights record.

Leading a cross party delegation to the UN Human Rights Commission convening in Geneva for its 40th session he disputed a report by the UN top rights official quoting government figures, which said that only 75% of occupied land have been released so far.

"Of the 28,215.29 acres of the private land held by the Security Forces since May 2009, 26,005.17 acres (92.16%) have been released as at 12th," Sri Lanka Foreign Minister Tilak Marapana told the UN Human Rights Council (UNHRC).

"However, the remaining lands, which are a necessity in the context of national security, would continue to be held by the security forces, with compensation being paid in respect of privately-owned lands." [...]

A source published after the publication of the DFAT Sri Lanka report continued to confirm the Journalists for Democracy in Sri Lanka reporting of March 2019:

[Thomson Reuters Foundation News, Sri Lankan Tamil women fight for land a decade after war ends, 3 March 2020](#)

[...] About 85% of the private lands in the north and east held by armed forces "have already been handed over to the legitimate owners," said Chandana Wickramasinghe, an army spokesman.

The remaining land is of "tactical importance" and is vital for national security, he said.

"Hence releasing the remaining lands will depend on the situation subsequent to the accessing of security parameters. Therefore a timeline is not a matter that can be discussed at present," he told the Thomson Reuters Foundation in emailed comments [...]

3. Refugee Convention Claims

Race/Nationality; Tamils

Methodological observations

Country information has been presented as assertions without any reference to specific source material included in the body of the text or in footnotes.

However, this section of the DFAT Sri Lanka report includes vague source descriptions. For example:

- “Local sources told DFAT...” (paras. 3.11, 3.12, 3.13)
- “Anecdotal evidence...” (para. 3.3)
- “Some members of the Tamil community report...” (paras. 3.7, 3.11)
- “Some Tamil sources claimed...” (para. 3.9)
- “Many Tamils...reported...” (para. 3.10)

By sometimes using no source attributions or description and other times vague source descriptions or referring to specific source material, it may be inferred that the DFAT Sri Lanka report suggests that some sources are more authoritative than others.

Content-specific observations

The DFAT assessed that Tamils “face a low risk of official or societal discrimination based on their ethnicity or caste”:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims

Race/Nationality [...]

3.4 DFAT assesses that non-Muslim Sri Lankans, including Tamils, face a low risk of official or societal discrimination based on ethnicity or caste, including in their ability to access education, employment or housing [...]

Tamils [...]

3.8 DFAT assesses there is no official discrimination on the basis of ethnicity in public sector employment [...]

However, the following sources available at the time of drafting the DFAT Sri Lanka report noted state and societal discrimination of Tamils:

[U.S. Department of State, 2019 Country Reports on Human Rights Practices: Sri Lanka, 11 March 2020](#)

[...] Section 6., National/Racial/Ethnic Minorities [...]

Both local and Indian-origin Tamils maintained that they suffered longstanding, systematic discrimination in university education, government employment, housing, health services, language laws, and procedures for naturalization of noncitizens. Throughout the country, but especially in the North and East, Tamils reported security forces regularly monitored and harassed members of their community, especially activists, journalists, and former or suspected former LTTE members [...]

[The Jamestown Foundation, Ethnic Conflict in Sri Lanka: The Easter Bombings and Beyond, 26 July 2019](#)

[...] In the East, there is a different, but no more positive, post-war outcome for the Tamils. Here, Muslim communities have been allowed, even encouraged, by the state to prosper at the direct expense of Tamils; the desire for retribution runs deep. Muslims have taken over key political and administrative posts and have ensured that state resources are unevenly distributed in their favour—local government, development, education all lack any form of ethnic balance. Ampara and Batticaloa—the two main cities in the East—are visibly thriving, but only for the Muslims. In the East, Tamils lack the financial resources and the social networks necessary to migrate to the West. Instead, they find unsatisfactory employment contracts largely in the Middle East, again controlled by Muslim traders [...]

Sources published since the publication of the DFAT Sri Lanka report continue to document discrimination faced by Tamils and also report on the violent treatment against Tamils, as well as the limited protection available to them [Additional sources published since the November 2019 elections documenting state-violence against Tamils, have been included further below]:

[UK Home Office, Report of a Home Office fact-finding mission to Sri Lanka, Conducted between 28 September and 5 October 2019, 20 January 2020](#)

[...] Annex D: Notes of meetings with sources [...]

Human Rights Activist 30 September 2019 [...]

Some random Tamils are subject to intimidation [by the security forces] [...]

[UK Home Office, Report of a Home Office fact-finding mission to Sri Lanka, Conducted between 28 September and 5 October 2019, 20 January 2020](#)

[...] Annex D: Notes of meetings with sources [...]

Notes of meetings with sources, Tamil National Alliance (TNA), 1 October 2019 [...]

Q Do the Gov monitor activities in London? [...]

We (TNA) are a political organisation representing the Tamil people of Sri Lanka and have been democratically elected into parliament we have no links to the TGTE but at the same time we acknowledge that there is discrimination against Tamils. Violations of Human Rights, religious, social and cultural rights and other continuing phenomena and continue to inhibit the Tamils from living with dignity. After the change in government post-2015 there have been some improvements. To discriminate against minorities is tolerated and is not dealt with under the law" [...]

Q If a Tamil person was being threatened would police offer protection, or if they report a crime?

Not always. It would depend on the circumstances if the offenders are influential people, then no [...]

[UK Home Office, Report of a Home Office fact-finding mission to Sri Lanka, Conducted between 28 September and 5 October 2019, 20 January 2020](#)

[...] Annex D: Notes of meetings with sources [...]

UNHCR Sri Lanka 3 October 2019 [...]

Tamils returning back to areas in the North are facing a number of reintegration challenges - shelter, livelihood and WATSAN [Water and Sanitation]. The government are meant to set aside a quota of housing assistance for returnees, but this doesn't happen uniformly in all districts. Housing and land is a problem across the North as there are people who never owned land prior to the war - there is also secondary occupation and other complications [...]

[Tamil Guardian, Missing Tamil man found dead in Mannar, 20 December 2019](#)

[...] A Tamil man who had been reported as missing by his family in Mannar [...] has been found dead on Friday morning [...]

[Tamil Guardian, Tamil father of two gunned down on Boxing Day, 29 December 2019](#)

[...] A Tamil man was shot dead in Mannar [...] by unidentified gunmen [...]

[Al Jazeera, Sri Lanka's Tamils fear discrimination under new president, 2 January 2020](#)

[...] Sri Lanka's minority ethnic Tamils who are concentrated in the country's north, say the area still suffers from a lack of development, despite promises by its new President Gotabaya Rajapaksa [...] Analysts say despite the building of a new railway and road linking the peninsula and mainland, the gulf between the majority Sinhalese and Tamil community is still wide [...]

[Tamil Net, Increasing pattern of Sinhala officials controlling civil affairs in North-East: Wigneswaran, Mavai, 5 March 2020](#)

The previous regime in Colombo was employing Sinhalese from the South to the vacancies of unskilled labourers in the North. For example, Sinhala youth were deployed in large numbers for the job of electricity meter reading in households in the North. However, the present regime has gone a step further installing Sinhalese also in the top positions of the civil administration in the North-East,

observed former Northern Provincial Council Chief Minister Justice C.V. Wigneswaran. He was responding to a question from TamilNet on the recent trends of Sinhalicisation and militarisation of the civil administration in the occupied country of Eezham Tamils at the prolonged absence of the elected provincial councils [...]

Given that the DFAT Sri Lanka report was published before the November 2019 presidential election it fails to capture the changed political mood towards ethnic and religious minorities, as identified by a number of sources in the months following the election:

[Tamil Guardian, Tamil language street signs vandalized across Sri Lanka, 24 November 2019](#)

Tamil language signboards have reportedly been vandalised by unidentified persons across Sri Lanka, just days after Gotabaya Rajapaksa was sworn in as president.

Following last week's presidential election, a spur of racist events have taken place across the island, in which Tamil language signs are being forcibly removed or vandalized [...]

Earlier this week the Tamil road names of a street in Colombo were removed from signs, and last month a café in Colombo triggered outrage over social media after it displayed a sign instructing its employees that "No Tamil" is to be spoken [...]

[International Crisis Group, Watch List 2020, Asia, A Dangerous Sea Change in Sri Lanka, 29 January 2020](#)

[...] Asia

A Dangerous Sea Change in Sri Lanka

Since his election on 16 November 2019, Sri Lankan President Gotabaya Rajapaksa and his brother, Prime Minister Mahinda Rajapaksa, have initiated fundamental changes to policies on ethnic relations, the legacy of a 26-year civil war, and the rule of law [...] The shift in policy, rooted in part in the ethno-nationalism of many among Sri Lanka's Sinhala and Buddhist majority, threatens to increase ethnic and religious tensions and dangerously weaken checks on executive and state power [...]

Among Rajapaksa's 54 ministers are only two Tamils, and, for the first time since the nation became independent in 1948, no Muslim minister at all; there is only one female minister. Citing opposition among the Sinhala majority, Rajapaksa has repeatedly rejected any further devolution of power to the provinces, including what is mandated in the current constitution, thereby neutralising a mechanism intended to give ethnic minorities greater self-governance. Past statements by Gotabaya calling the large Tamil majority in the north "unnatural" heighten fears of military- and state-supported population transfer designed to change the demographic picture [...]

[Centre for Policy Alternatives, Sri Lanka's Recent Political Challenges & Prospects for the Future, March 2020](#)

[...] Reconciliation and Human Rights [...]

Indeed, there seems to be no indication that any political concessions will be made with regard to the political concerns of minority groups, with the Government refusing to make even symbolic gestures of inclusion (scrapping the singing of the national anthem in Tamil at the Independence Day event for instance). Insofar as minorities have been acknowledged, rhetorical focus is shifted to the creation of a civic nationalism which includes those groups, whilst dismissing those particular concerns which have emerged out of their specific experiences as minorities. The Government reassures members of minority groups that it will serve the 'whole country' but has been largely dismissive of specific 'divisive' political demands, which are often framed as being the result of manipulation by Tamil politicians and Western aligned interests [...]

[Carnegie Endowment for International Peace, Polarization and the Pandemic, 28 April 2020](#)

The coronavirus creates opportunities for leaders to bridge divides in politically polarized countries. While some have risen to that challenge, in many places, the crisis has aggravated political polarization, with dangerous consequences for public health, democracy, and vulnerable groups [...]

the president has exploited the crisis to empower the military and promote a militarized mindset toward governance that historically has harmed minority groups [...]

[The Guardian, 'It's a very worrying time': Sri Lanka's recovery interrupted by coronavirus, 12 April 2020](#)

Now with the current fears and restrictions, Fernando [Human rights activist, Ruki Fernando] is worried about vulnerable communities such as refugees, prisoners, the poor and minorities.

"We are seeing both racism and authoritarianism raising their ugly heads in the middle of the fight against Covid," he says [...]

[Tamil Guardian, Sri Lankan ultra-nationalist politician attacks minorities on Twitter, 7 June 2020](#)

Udaya Prabhath Gammanpila, leader of the Pivithuru Hela Urumaya (an ultra-Sinhala nationalist party), attacked minorities in Sri Lanka on Twitter claiming that they were provided too much freedom.

Gammanpila, a supporter of the Rajapaksa administration and former cabinet Minister, stated on Twitter:

"Some" minorities in Sri Lanka not only breathe but also blow at the majority.

Eg #EasterSundayAttack #AranthalawaMassacre #GonawalaMassacre

#AttackOnTempleOfToothRelic and thousands of many more such attacks

Gammanpila racist tweet follows increasing police brutality against Tamils in the North and East as well as attacks against Muslims in Sri Lanka [...]

3. Refugee Convention Claims

Tamils

The DFAT Sri Lanka report noted that during the 2015 presidential and parliamentary elections Tamils faced less harassment than during the 2010 elections:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims [...]

Tamils [...]

Tamils faced less harassment during the 2015 presidential and parliamentary elections than in the 2010 elections.

DFAT understands Tamils do not receive unwarranted attention from authorities because of their political involvement, including with the TNA. DFAT assesses there are no barriers to Tamil political participation [...]

It is noteworthy that the DFAT Sri Lanka report's publication date was not postponed to capture the outcome of the 2019 presidential election, which were held shortly after the DFAT Sri Lanka report was published, on 16th November 2019. Sources reporting on the election and post-election period noted that ethnic minorities, including Tamils and rehabilitated former LTTE members, were intimidated, prevented from voting and faced reprisals for not voting Gotabaya Rajapaksa:

[ACLED, Regional Overview: South Asia 10 – 16 November 2019, November 2019](#)

[...] numerous incidents of election-related violence were reported during the week of the country's presidential election, won by Sri Lanka Podujana Peramuna (SLPP) party candidate Gotabaya Rajapaksa. The violence included clashes between supporters of different political parties, as well as attacks on Muslim voters and Tamil voters [...]

[ACLED, Regional Overview: South Asia 17-23 November 2019, November 2019](#)

[...] there were various reports of post-election violence, as new president Gotabaya Rajapaksa appointed his brother and former president, Mahinda Rajapaksa, as the Prime Minister of Sri Lanka [...] Post-election violence included several clashes between supporters of rival political parties, as

well as mob violence targeting members of the Tamil community in Sabaragamuwa province. The victims had been accused of failing to vote for Gotabaya Rajapaksa [...]

[European Union Election Observation Mission, Democratic Socialist Republic of Sri Lanka
European Union Election Observation Mission FINAL REPORT Presidential election, 16
November 2019](#)

[...] XIV. Participation of ethnic and religious minorities [...]

The post-election period saw widespread vilification of minorities on social media as well as a number of attacks on mosques and against Tamils and Muslims in areas that had voted largely for Premadasa. These incidents raised fears among minority communities and heightened concerns about the prospects for future reconciliation [...]

Announcement of Results and Post-Election Environment [...]

b. Post-Election Environment [...]

The immediate post-election period saw attacks, verified by EU observers, on Tamils and Muslims, and intimidation of NDF supporters [...] EU observers noted hateful commentary targeting Tamil, Muslim and also Christian communities, primarily in Negombo, departing from the message of reconciliation voiced by political leaders [...]

[Jacobin, In Sri Lanka's Ethnocracy, Tamils Will Always Lose, 25 November 2019](#)

[...] many Tamil activists shifted their social media profiles to private and scrambled to strengthen their security protocols. New army checkpoints appeared in the eastern province of Amparai. A Muslim-owned shop in Haputala was attacked. In Kegalle, Tamil residents were assaulted in their homes and their appliances were vandalized for supporting the 'wrong' Sinhala Buddhist. A victim from the incident is recorded saying: 'We placed a vote and earned a beating' [...]

[Mario Arulthas \(Al Jazeera\), Trouble brews in post-election Sri Lanka, 9 December 2019](#)

[...] since the vote [November 2019 election] [...] hate speech, particularly against Tamils, has exploded on social media, with no action taken against those posting. In the centre of the country, Tamils were attacked by Sinhalese, who accused them of voting against Gota [...]

[INFORM, Repression of Dissent in Sri Lanka: Before and after the Presidential Election, 1st
July 2019 – 31st December 2019, February 2020](#)

[...] ii. Summary of incidents in the report [...]

While the election day was generally peaceful except several reported incidents of assaults, more than 20 incidents of violence have been reported in the post election period. However even during the pre-election period, there were systematic attempts to intimidate people of ethnic minorities and to prevent them from voting, and reprisals against ethnic minorities especially against estate Tamils during the post-election period [...]

there were allegations that large numbers of registered voters belonging to ethnic minorities were selectively removed in few areas in Colombo [...]

5. Intimidation targeted at estate Tamils to prevent them from voting [...]

There were at least 4 major incidents that targeted to intimidating estate Tamils and preventing them from voting. One of them occurred before the election, two incidents occurred on the election date. Estate Tamil are the most underprivileged ethnic group in Sri Lanka with inter-generational poverty and other issues [...]

[Swiss State Secretariat for Migration \(SEM\), Notiz Sri Lanka, Lagefortschreibung, 7 February
2020](#)

[...] 4.1. Tamilische Bevölkerung

[Informal translation from German to English provided by a COI researcher:

"Before the election [in November 2019], rehabilitated former LTTE members, who are now working for the Civil Security Department (CSD), were forced to attend campaign events in support of Gotabaya Rajapaksa"]

The DFAT Sri Lanka report states that it “failed to verify claims that Sinhalese settlers in the north and east have received preferential treatment to establish businesses” (emphasis added):

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims [...]

Tamils [...]

3.9 DFAT is aware that some Sinhalese from the south have resettled in the north and east with government assistance in the post-war period. Local sources in the north expressed concern about the construction of Buddhist statues and temples in non-Buddhist populated areas. **DFAT is unable to verify claims that Sinhalese settlers in the north and east have received preferential treatment to establish businesses.** Some Tamil sources claimed Sinhalese had been resettled on desired coastal land and that Sinhalese fishermen in the north were supported by the Navy [...]

However, when asked whether ‘Sinhalese are moving to the North’, a representative from the Northern province community interviewed by a UK Fact-Finding Mission in October 2019 (Note: Report only published in January 2020) stated that such preferential treatment did occur:

[UK Home Office, Report of a Home Office fact-finding mission to Sri Lanka, Conducted between 28 September and 5 October 2019, 20 January 2020](#)

[...] Annex D: Notes of meetings with sources [...]

Representative from the Northern province community, 2 October 2019 [...]

Q. Are Sinhalese moving to the North?

It’s discreetly happening but not at the same levels as before. Some state-sponsored colonisation of Buddhists into Tamil areas continues on a low scale. Housing schemes may prioritise Sinhalese applicants [...]

The following source, available at the time of drafting the DFAT Sri Lanka report, noted how despite a court order a cremation took place (emphasis added):

[Centre for Policy Alternatives \(CPA\), CPA calls for urgent action to address recent events in Mullaitivu District, 30 September 2019](#)

The Centre for Policy Alternatives (CPA) is deeply troubled by the recent incidents in the Mullaitivu District around the disputed land between a Neeraviyadi Pillaiyar Kovil and Mullaitivu Gurukanda Purana Rajamaha Viharaya, that is illustrative of the fault lines of conflict in post war Sri Lanka. The incident speaks to multiple issues of concern, ranging from the undermining of the rule of law to militarisation and competing land claims to ethno-religious tensions, and highlight the fragile peace that is under severe strain by nationalist forces [...]

the incident occurred when attempts were made to cremate Colomba Medhalankarakitti Thero, who resided in the Mullaitivu Gurukanda Purana Rajamaha Viharaya on land claimed to belong to the Neeraviyadi Pillaiyar Kovil. Locals and the Kovil Trustees protested this move, with the matter being taken to the Mullaitivu Magistrates Court with a court order issued preventing the cremation on the said land. Despite the court order and in direct violation of it, the cremation took place on the land claimed to belong to the Kovil on 23rd September 2019 with video footage showing Galagoda Aththe Gnanasara Thero and other monks leading the proceedings. Reports also indicate the tacit support of the police and military who failed to prevent the violation of the court order and the alleged assault of an Attorney-at-Law.

The present instance is the latest in a series of incidents where Gnanasara Thero has demonstrated his complete disregard for the law and contempt towards court and judicial officials. It is imperative that the Attorney General’s Department, the Police and the Judiciary take all measures to hold to account Gnanasara Thero and all others involved in violating the court order [...]

Sources published since the publication of the DFAT Sri Lanka report continue to document how despite court orders banning the erection of Buddhist statues, temples or even claim to land as theirs in the North, these practices continued in the north and east with government approval:

[Human Rights Litigation and International Advocacy Clinic, Submission for the List of Issues: Sri Lanka, 13 January 2020](#)

[...] Land Seizures and Resettlement: Freedom of Movement, Right to Privacy, and Rights of Minorities (Articles 17, 27) [...]

Concerns have also been raised that land allocation by the Government has included settling Sinhalese on previously Muslim lands to the disadvantage of shrinking Muslim minorities in such communities. State-sponsored programs that transfer Sinhalese into the North and East, such as Gal Oya and Weli Oya/Manal Aru, are viewed by the local Tamil and Muslim populations as particularly contentious. For example, the majority Muslim-and-Hindu, Tamil-speaking towns of Pulmoaddai and Kokkilai, which both border the Northern and Eastern provinces, have gone through well-documented changes throughout military occupation, such as the creation of military outposts, Sinhalese settlements, and the building of military-controlled Buddhist sites in the occupied areas [...]

[UK Home Office, Report of a Home Office fact-finding mission to Sri Lanka, Conducted between 28 September and 5 October 2019, 20 January 2020](#)

[...] Annex D: Notes of meetings with sources [...]

Representative from the Northern province community, 2 October 2019 [...]

Q. Are Sinhalese moving to the North?

It's discreetly happening but not at the same levels as before. Some state-sponsored colonisation of Buddhists into Tamil areas continues on a low scale [...] When the military build Buddhist temples they are aiding and abetting Sinhalisation in the North. When military release private land they leave the Buddhist temples, so Buddhists then claim the land as theirs. There are court orders banning such action. There are reports saying over 200 Buddhist shrines have been built in the North and East since the end of the war" [...]

3. Refugee Convention Claims

Tamils: Monitoring, harassment, arrest and detention

The DFAT Sri Lanka report notes that the pre-November 2019 government had "relaxed some restrictions on the public commemoration of events associated with the Tamils' armed struggle for statehood" (emphasis added):

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims [...]

Tamils [...]

Monitoring, harassment, arrest and detention [...]

3.13 The current government has **relaxed some restrictions on the public commemoration of events associated with the Tamils' armed struggle for statehood**. While sources told DFAT there is monitoring by the authorities, Tamils have been free to hold public ceremonies marking Maaveerar Naal (Great Heroes' Day) since 2016. Maaveerar Naal commemorates those who died fighting for the LTTE. A local source told DFAT the atmosphere at war commemorations was 'constructive' and Tamils were increasingly comfortable marking such events. A memorial event to mark the 10-year anniversary of the end of the war was held in Mullivaikkal (Northern Province) on 18 May 2019, albeit with a high security presence. Sources told DFAT that heightened security and fear levels under the Emergency Regulations introduced on 22 April 2019 discouraged some people from attending. The Emergency Regulations lapsed on 22 August 2019. [...]

However, sources published following the publication of the DFAT Sri Lanka report in November 2019 documented threats against and arrests of Tamils involved in such activities:

[Tamil Guardian, Sri Lankan military threatens Maaveerar Naal organisers, 24 November 2019](#)

The Sri Lankan security forces have threatened Tamils who have helped organise activities across the North-East ahead of Maaveerar Naal next week.

President of the Tamil National People's Front Gajen Ponnambalam said that "organisers everywhere" had been threatened by both Sri Lanka's military and police.

Ponnambalam said that earlier today, TNPF General Secretary Selvarajah Kajendran was threatened by "military personnel in civil clothes" to stop all preparation work for Maaveerar Naal in Point Pedro, claiming a court order had been put in place.

Also earlier today, Tamils in Mullivaikkal were "warned by police not to organise any event" by plainclothes officers who instructed them to report to the security forces on Monday.

In Vavuniya yesterday, "police had asked 4 organisers of the memorial events there to report to the police," Ponnambalam added. [...]

[Tamil Guardian, 13 Tamils arrested during Maaveerar Naal preparations, 26 November 2019](#)

Sri Lankan police arrested thirteen Tamils, including the Mullaitivu co-ordinator of the Tamil National People's Front (TNPF), while they were preparing for Maaveerar Naal remembrance tomorrow.

The group were clearing and decorating space in Mullivaikkal when Mullaitivu police and intelligence officers arrived and warned them not to carry out any remembrance activities.

The police seized the red and yellow flags and other decorations the organisers were using and also arrested all thirteen individuals present, transporting them to Mullaitivu police station.

After extensive questioning the group were let go but warned to carry out the commemorations 'peacefully' and not to use LTTE flags or symbols. [...]

[Tamil Guardian, Sri Lankan police halt another Mullivaikkal remembrance event in Batticaloa, 18 May 2020](#)

[...] Sri Lankan police halted Ilankai Tamil Arasi Katchi's (ITAK) Mullivaikkal remembrance event at their office in Batticaloa [...] ITAK members and locals were stopped from paying their respects minutes before the event began. The police handed over a court order to ITAK's General Secretary, K Thurairajasingam [...] Despite the limited number of attendees, the police insisted that event could not go ahead. This is the second memorial event to be blocked by the police in Batticaloa today [...] Sri Lankan military and police have attempted to stop remembrance events across the North-East today as well as an increase in intimidation in the lead up to Tamil Genocide Remembrance Day [...]

[Journalists for Democracy in Sri Lanka, Latest Sri Lanka military promotions "reeks of brazen impunity", 25 May 2020](#)

[...] A war commemoration event involving the armed forces was permitted to go ahead in Colombo this week despite concerns about Covid-19 but security forces used the virus as an excuse to prevent such memorialisation by Tamils in the north-east [...]

Whilst the DFAT Sri Lanka reported that on the one hand monitoring of Tamils decreased and on the other hand the surveillance of Tamils in the north and east continued, it also noted that those being monitored did not face physical violence:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims [...]

Tamils [...]

Monitoring, harassment, arrest and detention [...]

3.15 DFAT assesses that, while monitoring of Tamils in day-to-day life has decreased significantly under the current government, surveillance of Tamils in the north and east continues, particularly those associated with politically-sensitive issues. Physical violence against those being monitored is not common [...]

However, the following source available at the time of drafting the DFAT Sri Lanka report presented a different picture:

[U.S. Department of State, 2019 Country Reports on Human Rights Practices: Sri Lanka, 11 March 2020](#)

[...] section 6., National/Racial/Ethnic Minorities [...]

Throughout the country, but especially in the North and East, Tamils reported security forces regularly monitored and harassed members of their community [...]

[The Jamestown Foundation, Ethnic Conflict in Sri Lanka: The Easter Bombings and Beyond, 26 July 2019](#)

[...] The North is a virtual police state, and the security forces have developed an institutional obsession over LTTE remnants and possible resurgence, which has not yet materialized and probably will not. The province is on lock-down, militarized, and under the tightest and most insidious system of surveillance, which reaches down to the village level. The slightest sign of activity leads to disproportionate responses with scant regard for human rights and civil liberties [...]

Furthermore, since the publication of the DFAT Sri Lanka report the following sources have documented physical violence, including torture, against Tamils, as well as enforced disappearance, by government authorities:

[Tamil Guardian, Tamil man reported missing after being summoned by TID, 22 December 2019](#)

A Tamil man from Jaffna who had been summoned to Sri Lanka's Terrorism Investigation Division (TID) has been reported as missing by his family. 38-year-old Paramu Vijayakumar was summoned to the TID office in Colombo on the 6th of December. His wife said that Vijayakumar had left for Colombo but has not been seen since. When she went to file a missing persons complaint at her local police station in Valvettithurai, they reportedly told her they had been in contact with the TID and no summons had been issued for her husband. Sri Lankan police are reportedly conducting further investigations [...]

[Tamil Guardian, Sri Lanka police torture two Tamils in Jaffna, 20 January 2020](#)

Sri Lankan police in Jaffna have been accused of torturing two Tamils in Jaffna this week, leaving them both with broken limbs. The two Tamil men were arrested by Kayts police and accused of theft. They allege that once taken to the police station, they both were beaten and tortured by police officers - to the point that they both had broken arms. The official in charge of the crime division at the station was singled out as being responsible for the torture that they endured. Local Tamil civil society organisations said they have repeatedly complained about the officer in question, who has been allegedly to repeatedly been involved in unlawful activities". The same source further stated that "Torture remains endemic on the island, with state security forces accused of systematically torturing Tamil men and women including through sexual violence [...]"

[Tamil Guardian, Tamil man in hospital after being beaten unconscious by Sri Lankan police, 12 March 2020](#)

A Tamil man has been admitted to Jaffna General Hospital after he was arrested by Sri Lankan police and found beaten unconscious [...] Sunthar was arrested for an alleged assault in Kalvuyangad that took place on December 4 [2019]. His wife had returned home from work to find that her house doors were locked and told that her husband had been arrested by the Sri Lankan police. Though she attempted to visit him, she was not permitted to see her husband, even as she remained locked out of her own house. She went on to file a complaint with the Humans Rights Commission's (HRC) Jaffna office [...]

[Tamil Guardian, Drunk police officers severely injure Tamil youngsters in unprovoked attack, 22 April 2020](#)

A young Tamil man from Jaffna among several other youngsters, were brutally attacked by drunk off-duty police officers and viciously dragged to the local police station [...]

This attack is an example of the many incidents of police harassment and brutal treatment of civilians across the North-East in the past few weeks during the curfew. There have been incidents of bicycles having their tyres slashed; chains ripped out, people being harassed and beaten for standing in the front of their house, breaking chairs and vandalizing houses and also hitting and behaving inappropriately with women [...]

[Tamil Guardian, Sri Lankan police leave three Tamil women hospitalised in brutal assault, 1 May 2020](#)

Sri Lankan police officers forced entry into a house in Jaffna and viciously attacked family members with their guns and bats, leaving at least three Tamil women hospitalized [...] Children and elderly people living in the house were also ruthlessly assaulted, with officers threatening to arrest people on false drug possession charges [...]

[Right to Life, The lives of people in the North who have been tortured by the governments military rule, 12 May 2020](#)

[...] Armed forces have been deployed throughout the Jaffna town in a situation where curfews have been lifted and people begin to move. It is also reported that the civilian officials in the North are very displeased with the military takeover of most of the civilian activities, including the corona work and the distribution of subsidies. Over the past month, the Sri Lankan army and police have been reportedly harassing poor people in the North using curfews in Sri Lanka in the wake of the Corona epidemic.

These people are being harassed by people coming out of their homes for lack of necessities, including food and water. The Jaffna office of the Human Rights Commission has received nine complaints. Seven of them are against Chavakachcheri, Vaddukkoddai, Kopay and Point Pedro police stations and Elephant Pass. Many families in Jaffna have been affected due to lack of drinking water. One of the complaints received by the Human Rights Commission is the brutal assault on the people who come to get water. The most recent incident was the April 25 [2020] attack on a resident of Vatukovil in Jaffna when he went to the Sittakeesi Guna Devi Temple for water. He was brutally assaulted and beaten by the police. During the curfew, fishing was allowed by the Navy, but those who went to sea to sell their produce were fired. On April 7 [2020], the Navy attacked four persons who were trying to get sea leeches on the night of the Sillarman Thuda beach in Poonakadi in the Kilinochchi district. Thirty-two-year-old Selvakumar had broken his arm.

On April 7 [2020], Indrallal and his brother, who were engaged in fishing in the area, were assaulted by 10 naval personnel surrounded by Julian, who is studying at the University of Jaffna. The office of Nadarajalingam Thushanthan, a journalist of the Mogulvan web site, was brutally attacked by a group that broke into the office at around 5.45 pm on March 30 [2020]. These attacks and the release of assailants, while protecting the military and police forces, have been used in the backdrop of violent attacks on innocent people coming out of their homes to get water to drink while the curfew is being implemented [...]

[Tamil Net, SL Army fires at Tamil youth in Point Pedro, Jaffna, 15 May 2020](#)

[...] 22-year-old Anushan Pasupathy sustained three gunshot wounds as the occupying SL Army (SLA) opened fire at the Tamil youth while he was riding a motorbike between Kaanthiyoore and Mu'raavil in Point Pedro, Jaffna [...]

One of the SL Army soldier groups, deployed on Jaffna-Point Pedro Road fired at him without any provocation [...]

In recent days, there have been reports of increasing violent acts by the Sinhala soldiers, who are stationed in the occupied Tamil homeland. The SLA soldiers claim that they are controlling the spread of COVID-19 as well as assisting the SL Police [...]

[Tamil Guardian, Sri Lankan navy assaults Tamil farmers in Jaffna, 21 May 2020](#)

Sri Lankan sailors assaulted at least two Tamil farmers in Vadamarachchi East this week, in yet another attack on Tamil civilians. The farmers were returning from work, when they were stopped by

the sailors and attacked with metal wires [...] The attack is the latest in a series of ramped up Sri Lankan state violence against Tamil civilians in the North-East [...]

[Tamil Guardian, Falsely arrested and tortured disabled Tamil man submits complaint at Human Rights Commission, 3 June 2020](#)

An elderly disabled man was falsely accused and arrested by police officers and tortured in custody [...]

In addition it is observed that the DFAT report does not specify in detail the methods and means by which Tamils are being monitored. Instead it notes that the monitoring methods are “more subtle’ than they used to be and includes a brief reference to questioning individuals, informants and photographs at paragraphs 3.11 and 3.12 [emphasis added]:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims

Race/Nationality [...]

Tamils [...]

Monitoring, harassment, arrest and detention

3.10 Many Tamils, particularly in the north and east, **reported being monitored**, harassed, arrested or detained by security forces during the war. While LTTE members and supporters were almost all Tamil, security forces also imputed LTTE support based on ethnicity, and emergency regulations were, at times, applied in a discriminatory manner (see Political Opinion (Actual or imputed)).

3.11 Members of the Tamil community claim that authorities continue to **monitor public gatherings and protests in the north and east, and practise targeted surveillance and questioning of individuals and groups**. Security forces are most likely to **monitor people associated with politically-sensitive issues related to the war**, including missing persons, land release and memorial events (see Civil society organisations and government critics and Media). Local sources told DFAT that the **method of monitoring today was more subtle** (see Monitoring of former LTTE members).

3.12 Communities in the north and east report that monitoring is undertaken by military intelligence and the Police Criminal Investigation Department, though in many cases officers dress in plain clothes and do not identify themselves. According to local sources, those participating in public gatherings and protests are often **photographed**. In the east, **local informants** within the community (including neighbours and business owners) reportedly undertake monitoring on behalf of the authorities. Intelligence agencies also monitor links to foreign groups, including some in the Tamil diaspora.

3.13 The current government has relaxed some restrictions on the public commemoration of events associated with the Tamils’ armed struggle for statehood. While sources told DFAT there is **monitoring by the authorities**, Tamils have been free to hold public ceremonies marking Maaveerar Naal (Great Heroes’ Day) since 2016. Maaveerar Naal commemorates those who died fighting for the LTTE. A local source told DFAT the atmosphere at war commemorations was ‘constructive’ and Tamils were increasingly comfortable marking such events. A memorial event to mark the 10-year anniversary of the end of the war was held in Mullivaikkal (Northern Province) on 18 May 2019, albeit with a high security presence. Sources told DFAT that heightened security and fear levels under the Emergency Regulations introduced on 22 April 2019 discouraged some people from attending. The Emergency Regulations lapsed on 22 August 2019.

3.14 LTTE cemeteries in the north and east were destroyed by government forces during and after the war. Some have subsequently been restored. It is illegal to commemorate the birthday of LTTE leader Prabhakaran (26 November), although some Tamils are known to defy this ban. Seven Tamils, including a TNA provincial councillor, were arrested for planning to commemorate Prabhakaran’s birthday in 2018, but later released. The public display of LTTE symbols, including the LTTE flag and images of Prabhakaran, is banned. On 2 May 2019, the president and secretary of the Student Union at the University of Jaffna, along with the university’s canteen manager, were arrested under the Prevention of Terrorism Act (PTA) for displaying a photo of Prabhakaran and being in possession of LTTE literature. They were subsequently released on bail.

3.15 DFAT assesses that, **while monitoring of Tamils in day-to-day life has decreased significantly under the current government, surveillance of Tamils in the north and east continues, particularly those associated with politically-sensitive issues.** Physical violence against those being monitored is not common [...]

Information available at the time of drafting the DFAT report suggests that the Sri Lankan government has a sophisticated surveillance system in place in the North of the country, which “reaches down to the village level”, and is ‘ramping up’ its monitoring and surveillance (though the source did not indicate this was specifically directed against Tamils), including online surveillance:

[The Jamestown Foundation, Ethnic Conflict in Sri Lanka: The Easter Bombings and Beyond, 26 July 2019](#)

[...] The North is a virtual police state, and the security forces have developed an institutional obsession over LTTE remnants and possible resurgence, which has not yet materialized and probably will not. The province is on lock-down, militarized, and under the tightest and most insidious system of surveillance, which reaches down to the village level. The slightest sign of activity leads to disproportionate responses with scant regard for human rights and civil liberties [...]

[OHCHR news, End of Mission Statement United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Mr. Clément Nyaletsossi Voulé, on his visit to Sri Lanka \(18-26 July 2019\), 26 July 2019](#)

[...] I am very concerned at the numerous accounts I received of surveillance, including online surveillance, used to monitor the activities of the civil society sector and intimidate those protesting peacefully for their demands to be heard

Whether people demand the return of their lands, information on their disappeared family members, better living and working conditions, all seem to undergo some low but regular level of surveillance which includes questioning, intimidating phone calls and taking of photos and videos. This type of surveillance can inhibit the workings of civil society organisations and dissuade people from joining in demonstrations. Indeed, reports that I have heard while I have been in the country have indicated such. Members of civil society have also expressed their concerns to me as to how this information may be used, both now and in the future.

Surveillance seems to be particularly prevalent in the North and East of the country and seems to have increased following the Easter Sunday attacks, even though the areas affected have little to no connection with the attacks or the perpetrators. This, coupled with the continuous and strong military presence, which has a highly symbolic value for the lack of accountability for the human rights violations committed during the war, contribute to perpetuate the frustrations, resentment and disenfranchisement, felt by the communities in those areas which remain mistrustful of any State institution. While this surveillance may not be a State-led policy, the State has the responsibility to take the necessary steps so that civil society can freely carry out their legitimate work without surveillance or intimidation.

Indeed, before, during and after my consultations with civil society, participants reported receiving intimidating phone calls, demanding information on other participants, topics discussed and route plans. I was personally witness to this surveillance. During my consultation in Trincomalee, presumed intelligence personnel in civilian clothing were observed monitoring participants outside of the meeting place. In another location, military personnel took note of our vehicles’ number plates. I must, at this point, categorically condemn these instances of surveillance, which may be considered as acts of reprisal and I remind the Government that it has an obligation to ensure that no acts of reprisal occur against those under its jurisdiction who wish to interact with UN human rights mechanisms [...]

[Freedom House, Freedom on the Net: 2019 Sri Lanka, 4 November 2019](#)

[...] Does state surveillance of internet activities infringe on users’ right to privacy [...]

[...] Following the Easter Sunday attacks, the government indicated its intention to ramp up monitoring and surveillance. In May 2019, the prime minister announced a plan to implement a Centralized and Integrated Population Information System (CIPIS) to track individuals engaged in

terrorism, money laundering, and transaction and financial crimes. It was unclear what privacy considerations, if any, had been incorporated into the plan.

During a visit to China in May, President Sirisena asked Chinese president Xi Jinping to share surveillance technology with China, citing the challenges of surveilling encrypted platforms. President Xi reportedly agreed to meet Sirisena's request.

In April, Colombo's largest airport announced that it would begin using a facial recognition system that was donated by the UN Office on Drugs and Crime.

The introduction of the electronic identity card (e-NIC) project has also raised surveillance concerns. The project includes a central database storing wide-ranging information and biometrics with "family tree" data. Activists warn that this data could be used to target political opponents and is vulnerable to hacking. However, there was little opposition to the project when it was first introduced, presumably because the government justified it as a needed improvement to the state's service delivery.

Extrajudicial surveillance of personal communications is prohibited under the Telecommunications Act No. 27 of 1996. However, communications can be intercepted on the order of a minister or a court, or in connection with the investigation of a crime.

State agencies reportedly possess some technologies that could facilitate surveillance. In March 2019, President Sirisena requested approval for the government to purchase \$38.9 million worth of surveillance technology from an unnamed Israeli company. Bypassing the normal procedures for purchasing such technology, Sirisena claimed the request, which was purportedly to tackle drug trafficking, was urgent and must be kept secret [...]

The Sri Lanka Campaign for Peace and Justice and Human Rights Watch noted an increase in surveillance by the Sri Lankan security agencies since the November 2019 elections:

[Sri Lanka Campaign for Peace and Justice, Abandoned Promises? Preserving Human Rights and Pursuing Accountability in Gota's Sri Lanka, February 2020](#)

[...] The Promise [...]

Former LTTE combatants and Tamil disappearance activists continue to bear the brunt of the state's security apparatus. In December 2019, families of the disappeared protesting in the North and East of the country published a joint letter to the UN [...] which noted an increase in intimidation and surveillance by the military, including home visits and interrogations [...]

[Human Rights Watch, Sri Lanka: Security Agencies Shutting Down Civic Space, 3 March 2020](#)

Sri Lankan security agencies are stepping up surveillance, harassment, and threats against human rights activists and journalists [...]

In interviews with 15 Sri Lankan human rights defenders working in different locations around the country, Human Rights Watch heard consistent accounts of increased surveillance and pressure from security agencies. Several said that intelligence officials had asked activists and victims about their advocacy plans ahead of the current United Nations Human Rights Council session, which began on February 24, 2020 in Geneva. "We fear that international lobbying and travel to Geneva may not happen in future because of this situation," one activist said.

"Since the return of the Rajapaksas to power, a state of fear is being re-established in Sri Lanka," said Meenakshi Ganguly, South Asia director. "The activities of the government's security apparatus are evident in some violent attacks and public death threats against activists and journalists, but also in equally dangerous actions happening out of sight." [...]

Several human rights activists described receiving repeated phone calls from intelligence officers. Some of these calls have apparently been to tell activists that they are being watched at that moment. On other occasions the caller asks questions or issues threats or warnings.

One human rights defender said that "everything has shifted into a critical situation. After the election, military activities including monitoring and inquiries have increased. They are following us. That is a huge threat for human rights groups." Another activist said: "We collected stories and documents. Now we've stopped everything. We did a lot of work. Now, zero." A third activist said she so constantly feels under surveillance that intelligence officers "might even be in the next seat on the bus."

Police and intelligence officers have sought to instil fear in rights groups by visiting their offices and demanding staff lists, home addresses, and other personal details. One activist said the authorities came to his office demanding this information, but then revealed that “they knew already everything. My personal details, they knew it. This is part of the intimidation [...]

As part of efforts to curb the COVID-19 pandemic, the military’s role in contact-tracing was criticised by the Adayaalam Centre for Policy Research (ACPR):

[Adayaalam Centre for Policy Research \(ACPR\), Situation Brief No. 3 COVID-19: Sri Lanka’s militarised response poses grave threats to human rights, 30 April 2020](#)

[...] Key Areas of Human Rights Concerns around COVID-19 Response [...]

B. Militarisation of the COVID-19 Response [...]

(iv) Military’s role in Contact-Tracing [...]

Worryingly in Sri Lanka contact-tracing efforts are being lead by the State’s intelligence services who are notorious for their use of torture against primarily Tamil civilians and excombatants. They are using the assistance of telecommunication companies to trace individuals’ contacts and the places they have visited, in addition to looking through people’s immigration records. The military is also planning to use drones to monitor villages affected by COVID19. Already Tamil aid workers and activists in the North who have been distributing rations to impoverished communities including Tamil families of the disappeared and ex-combatants have reported been interrogated by the CID about where they got the aid. The CID has told them that they should be informed about any aid distributions even where activists had already informed local government officials. Reports have also emerged of the military leaking details of individuals they have traced discriminatorily against Tamils and Muslims. In a context where the military has consistently used surveillance as a tool of intimidation and harassment of human rights defenders, journalists, and the Tamil community, the broad powers and technology being given to them without any apparent oversight or end date is of grave concern to ACPR [...]

3. Refugee Convention claims

Political Opinion (Actual or Imputed): Political representation of minorities, including ethnic and religious minorities

The DFAT Sri Lanka report assesses that Tamils or "other [political] parties" do not face any "differences in treatment" (emphasis added):

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims [...]

Political Opinion (Actual or Imputed) [...]

Political representation of minorities, including ethnic and religious minorities [...]

3.53 Sri Lanka has no banned political parties and all parties operate freely within the same legal framework. **DFAT is not aware of any evidence to suggest that Sinhalese, Tamil, Muslim or other parties face any differences in treatment.** The PTA restricts certain actions by political parties or groups. Specifically, any person who ‘causes or intends to cause commission of acts of violence or religious, racial or communal disharmony’ can face a maximum of five years’ imprisonment. The government has committed to repeal and replace the PTA with human rights compliant counter-terrorism legislation. This process was ongoing at the time of publication (see Monitoring, harassment, arrest and detention). [...]

However, sources available during the drafting of the DFAT Sri Lanka report detail how Tamils' political participation was negatively affected by "systemic discrimination"; how members of a new political party called Rehabilitated Liberation Tigers Party and members of the proscribed Transnational Government of Tamil Eelam may face adverse treatment. See for example:

[Freedom House, Freedom in the World 2019: Sri Lanka, January 2019](#)

[...] systemic discrimination, including via language laws and naturalization procedures, negatively affects Tamils' political participation [...]

[Sri Lanka Brief, Sri Lanka: Approaching elections and implications on transitional justice, September 2019](#)

[...] OMP and the office for Reparations [...]

Another group of former LTTE cadres expressed their aspiration to go in to democratic politics amidst worrying economic concerns [...]

We have formed a political party called Rehabilitated Tamil Liberation Tigers Party. As a party too, we face police harassment. We want to be allowed to enjoy democratic way of life. We want livelihood support. We need freedom [...]

Moreover, sources published in the aftermath of the November 2019 elections (and therefore following the publication of the DFAT Sri Lanka report) highlight that ethnic minorities, including Tamils and rehabilitated former LTTE members, were intimidated, prevented from voting and faced reprisals for not voting Gotabaya Rajapaksa (see sources included at p. 20).

Additional sources available following the publication of the DFAT Sri Lanka report continued to report on such treatment:

[UK Home Office, Report of a Home Office fact-finding mission to Sri Lanka, Conducted between 28 September and 5 October 2019, 20 January 2020](#)

[...] Annex D: Notes of meetings with sources [...]

Human Rights Activist 30 September 2019 [...]

As a proscribed group, yes', TGTE [Transnational Government of Tamil Eelam] members would be at risk, as 'The TGTE say genocide is occurring so they would be at risk of arrest or other reprisals' [...]

Journalist 1 2 October 2019 [...]

The TGTE does not have much recognition in Sri Lanka. It formed after the defeat of the LTTE. At that time, it was seen as a big thing but now it's seen as an extreme, impractical organisation and is not taken seriously. It may be problematic for genuine members or supporters as the TGTE is banned in Sri Lanka [...]

Journalist 2 2 October 2019 [...]

[U.S. Department of State, 2019 Country Reports on Human Rights Practices: Sri Lanka, 11 March 2020](#)

[...] 1.f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence [...]

Security forces and police, armed with a court order, attempted to search the residence of Tamil National Alliance member of parliament S. Shritharan on August 21 [2019], a day after he criticized the appointment of Shavendra Silva as army commander. Earlier, on May 18 [2019], four soldiers and a police officer searched Shritharan's residence in Jaffna, while he was taking part in the commemoration of war victims in Kilinochchi [...]

[Tamil Guardian, Tamil political party repeatedly harassed by Sri Lankan police, 19 February 2020](#)

Sri Lankan police have repeatedly targeted the Tamil National People's Front (TNPF) over its initiatives to provide financial assistance to deprived communities in Mullaitivu [...]

The party's leader Gajendrakumar Ponnambalam, visited the Puthukkudiyiruppu Police Station on Tuesday (11th Feb 2020) to talk with the station's executives to address the issue. There was growing unrest among party members following the harassment by police officers.

Gajen Ponnampalam stated that TNPF's efforts to help the locals was being unnecessarily maligned by police:

“We have been helping locals of the village of Mayilkunjan in the town of Puthukkudiyiruppu, Mullaitivu who have asked for our help. Most of the locals here have those migrated from the town of Manaluru (now the government colonised Sinhala settlement area Weli Oya) and are living in poverty. Ever since we have been helping these locals, they have been harassed and vilified for accepting our support.

Recently we provided locals with Thai Pongal pots and 15 schoolchildren with bicycles but in both instances we have been subject of police investigations after they ‘allegedly’ received complaints over our gestures of support.”

He insisted that the constant police investigations was targeted to damage the rapport TNPF have established with locals;

“We believe these investigations are deliberately being made to halt our efforts in establishing a good relationship with locals and it is unfair to punish the locals for working with us and other parties.

After discussing the matter with the Puthukkudiyiruppu police officials, I have urged the investigations to stop. I have notified them that the Human Rights Commissions would be informed if this harassment continues,” he added [...]

[Tamil Guardian, Sri Lanka cites COVID-19 to order TNPF leaders into isolation ahead of Mullivaikkal Remembrance Day, 17 May 2020](#)

A Sri Lankan judge has issued a 14-day isolation order against eleven senior figures from the Tamil National People's Front (TNPF) this evening, just hours party members were to mark Tamil Genocide Day [...]

TNPF activists have been repeatedly harassed and intimidated this week as they went about marking 11 years since the massacres at Mullivaikkal [...]

[Tamil Guardian, Surveillance and intimidation of TNPF members ramps up, 23 May 2020](#)

The Tamil National People's Front has reported a surge in intimidation, surveillance and harassment of members and activists by the Sri Lanka security forces [...]

Treatment of perceived government critics

Section 3 of the DFAT Sri Lanka report address ‘Refugee Convention Claims’ including *Political Opinion (actual or imputed)* from paragraph 3.51 onwards. This section is then subdivided into the following themes:

Political representation of minorities, including ethnic and religious minorities

Liberation Tigers of Tamil Eelam (LTTE)

Rehabilitation

High-profile former LTTE members

Low-profile former LTTE members

Monitoring of former LTTE members

Former LTTE members living outside Sri Lanka

Family members of LTTE

Arrest, Detention and Prosecution

Societal discrimination

Scarring

As the section headings would indicate, no other political affiliation than LTTE and former LTTE members is addressed in this section of the DFAT Sri Lanka report. In the subsequent section *Groups of Interest* are addressed, which includes *Civil society organisations and government critics*. In this section one might expect the DFAT Sri Lanka report to address the treatment of other perceived political opponents. However, this is the section in full (emphasis added):

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] Civil society organisations and government critics

3.108 A broad range of NGOs and civil society groups are active in Sri Lanka. NGOs are required to register with the National Secretariat for NGOs. Some 1,500 NGOs were registered at the national level in 2019. DFAT assesses that, under the previous Rajapaksa Government, NGOs and their staff, especially those working on human rights issues, risked official harassment, including arrest or abduction, while performing their duties. Sri Lanka's state-run media regularly accused NGOs and civil society activists of being traitors, LTTE sympathisers or supporters, or of being backed by 'foreign' or 'Western' powers. NGO and civil society workers reported threats (including death threats) and intimidation. Authorities detained and questioned NGO workers, searched their offices and equipment, and seized documents. International NGO staff sometimes faced difficulties obtaining or renewing work visas. The space for civil society to operate has widened considerably since 2015, including in the north and east. **Civil society played an important role during the 2018 constitutional crisis in calling for democratic rights and the constitution to be upheld, and large public protests and rallies were held with little violence.**

3.109 The current government has publicly committed to allow freedom of speech and end surveillance of NGO workers and human rights defenders. NGOs operate relatively freely, although activists working on sensitive issues – including corruption, war-era human rights violations and missing persons – continue to report (predominantly low-level) surveillance, harassment and intimidation by security forces, particularly in, but not limited to, the north and east. In July 2018, human rights defenders Srishobana Yogalingam and Amitha Priyanthi were assaulted in separate incidents in Jaffna (Northern Province). DFAT understands that, in February 2019, a Tamil lawyer and human rights defender involved in a habeas corpus case in relation to enforced disappearances against Major General Duminda Kappetiwalana was attacked by an unknown assailant on a motorcycle immediately following a court hearing in Jaffna (the lawyer was targeted with a metal rod while driving; while uninjured, damage was inflicted on the lawyer's car). DFAT is further aware of reports of human rights defenders who attend sessions of the HRC in Geneva being questioned by the authorities upon their return to Sri Lanka.

3.110 The constitution guarantees freedom of speech and expression, freedom of peaceful assembly and freedom of association. Demonstrations occur regularly, although restrictions on public gatherings under the Emergency Regulations introduced on 22 April 2019 temporarily impacted on freedom of assembly. The Emergency Regulations lapsed on 22 August 2019. Protests are subject to a notification procedure. This requires protest organisers to notify the local police of their intention to hold a protest six hours in advance. **Local sources told DFAT that participants in politically-sensitive protests in the north, particularly in relation to missing persons and land returns, are monitored and sometimes questioned by the authorities. DFAT assesses that the post-2015 Sri Lankan Government has tolerated political dissent more than the former government, but some limits still apply. [...]**

As can be observed the DFAT Sri Lanka report mentions the late 2018 constitutional crisis. However, it only documents that protests were held with "little violence" and neglects to mention that protest resulted in civilian deaths or any other related political violence. The following illustrative sources available at the time of publication of the DFAT Sri Lanka report document physical violence and bribery to change allegiance during the constitutional crisis:

[Journalists for Democracy in Sri Lanka, Sri Lanka: Battle of two Prime Ministers turns deadly, 29 October 2018](#)

[...] As soon as Rajapaksa was sworn in as PM on Friday, mobs stormed state media institutions and took over editorial and technical control.

Former media minister Keheliya Rambukwella was seen among the group that entered state owned TV, Sri Lanka Rupavahini Corporation (SLRC).

The director general of information and editorial staff appointed to Independent Television Network (ITN), Sri Lanka Broadcasting Corporation (SLBC) and Associated Newspapers of Ceylon Ltd (ANCL) by the UNP-SLFP coalition have been forcibly replaced.

A recent media study has recognised the state as the largest media owner in the country.

The parliament speaker had warned the president of "severely damaging international implications," by forceful taking over of media institutions.

"You would also appreciate that the forcible takeovers, which have been reported at State Media institutions, has been seen as transcending a mere internal breakdown of law and order, and would have severely damaging international implications," said the letter by Speaker Jayasuriya. [...]

[International Crisis Group, Sri Lanka: Stepping Back from a Constitutional Crisis, 31 October 2018](#)

[...] I. Overview

President Maithripala Sirisena's unexpected decision on 26 October to sack Prime Minister Ranil Wickremesinghe and replace him with the former president, Mahinda Rajapaksa, could seriously destabilise and set back Sri Lanka. In failing to follow established legal procedures, Rajapaksa's appointment, should it stand, would be the country's first ever unconstitutional transfer of power. The power struggle now underway between Rajapaksa and Wickremesinghe has already turned violent, with the new prime minister's supporters attempting to stop a recently ousted minister from entering his office and clashing with his security detail. Risks of further bloodshed are high, particularly if mass protests by Wickremesinghe loyalists continue over the coming days. [...]

II. The Risks Ahead

[...] One person died and two others were wounded when pro-Rajapaksa crowds attempted to prevent the dismissed petroleum minister, Arjuna Ranatunga, from entering his ministry on 28 October and Ranatunga's bodyguard opened fire (the bodyguard and Ranatunga have both been arrested in connection with the shooting). Crowds of government employees from pro-Rajapaksa unions forcibly occupied government TV stations after Wickremesinghe's dismissal. Former minister and close Rajapaksa ally Wimal Weerawansa has threatened that his supporters will remove Wickremesinghe by force if he fails to leave his official residence. [...]

[Al Jazeera, Chaos in Sri Lanka parliament as MPs exchange blows, 15 November 2018](#)

[...] Sri Lanka's parliament descended into chaos with MPs swinging punches and throwing projectiles a day after legislators voted the prime minister out of office. [...]

[Journalists for Democracy in Sri Lanka, Sri Lanka's disputed PM sacked by parliament for second time \(VIDEO\), 16 November 2018](#)

[...] Chairs, heavy volumes and chilli powder dissolved in water were among projectiles thrown by Rajapaksa loyalists at anti Rajapaksa law makers.

Several MPs who supported the no-confidence motion and policemen were injured. [...]

[Foreign Affairs, The Future of Democracy in South Asia, 4 January 2019](#)

[...] On November 14, a fight broke out in the Sri Lankan Parliament. When the Speaker tried to call a vote, a group of MPs heckled him and rushed the podium. A rival faction tried to push the hecklers back. Men traded punches. One brandished a knife. A lawmaker cut himself trying to steal the Speaker's microphone and ended up in the hospital.

The chaos was the result of a constitutional crisis that erupted in October, when the country's president, Maithripala Sirisena, tried to oust the prime minister and replace him with a former president, Mahinda Rajapaksa. Lawmakers and citizens protested; Sirisena dissolved Parliament, until the Supreme Court ruled this unconstitutional; and Rajapaksa, rejected by Parliament, refused to step aside. The stalemate broke only in December, when Sirisena reinstated the deposed prime minister, Ranil Wickremesinghe, in the face of concerted opposition from the judiciary and a majority of Parliament. [...]

[Sri Lanka Brief, Sri Lanka Briefing Notes, Issue No 14, February 2019](#)

[...] 2. CONSTITUTIONAL COUP AND ITS POLITICAL IMPLICATIONS

On Friday 26 October 2019, President Sirisena appointed the former President Rajapakse as Prime Minister (PM). In the seven weeks that followed Sri Lanka witnessed its worst instability since the end of the civil war in 2009.

Several Members of the Parliament (MPs) crossed over to the 'new governing coalition' while reports surfaced that this coalition attempted to bribe MPs with hundreds of millions of rupees to crossover².

[...]

2 <http://www.ft.lk/news/CIABOC-starts-investigation-into-attempted-bribery-of-MPs/56-667826>
<https://www.newsfirst.lk/2018/11/29/tisl-provides-a-statement-on-mp-bribery/>

Moreover, no information is included in the DFAT Sri Lanka report on the harassment of political opponents as evidenced by the following illustrative sources available at the time of publication:

[Freedom House, Freedom in the World 2019: Sri Lanka, January 2019](#)

[...] However, political debates between parties sometimes involve an element of violence and intimidation, which became apparent during the 2018 constitutional crisis. Among other incidents, Rajapaksa supporters attacked legislators opposed to his appointment as prime minister with chairs and chili powder to prevent them from holding a no-confidence vote in November. Opposition groupings are generally free to carry out peaceful political activities and are able to win power through elections. Most recently, the opposition SLPP won control of 231 out of 340 local councils in the February 2018 elections. However, opposition figures and supporters sometimes face harassment. Election observers noted that some opposition party members were attacked and intimidated in the Northern Province during the 2015 parliamentary election campaign. [...]

[Colombo Gazette, TNA MP tells Parliament his house was raided today, 21 August 2019](#)

(MENAFN - Colombo Gazette) Tamil National Alliance (TNA) Parliamentarian S. Sritharan informed Parliament today that his house in Kilinochchi was raided by the Police and military. He said that while he was in Colombo to attend Parliament, the Police and military raided his property today claiming they were looking for hidden weapons. Sritharan said that the raid was carried out based on false information and that it was a threat to his life. He urged Speaker Karu Jayasuriya to intervene in the matter and ensure his Parliament privileges are protected. The Speaker requested the State Minister of Defence Ruwan Wijewardena to look into the issue.

N.B. The arrest came a day after he criticised the appointment of Shavendra Silva as army commander:

[Colombo Gazette, TNA dismayed by appointment made by President, 19 August 2019](#)

[...] TNA spokesman M.A. Sumanthiran said that the appointment of Shavendra Silva, an individual who stands accused of grave crimes, as Army Commander, is a serious affront to the Tamil People. "We are deeply dismayed by this appointment," Sumanthiran said. Silva was the Chief of Staff, Colonel of the Regiment, Gajaba Regiment and Colonel of the Regiment, Commando Regiment at the time he was appointed as the new Commander of the Army. [...]

Further evidence of arrests and an attack on the political opposition have been documented following the publication of the DFAT Sri Lanka report, for example:

[Associated Press, Opposition lawmakers protest arrest of ex-Cabinet minister, 23 December 2019](#)

[...] About 200 opposition lawmakers and supporters protested in Sri Lanka's capital on Monday to condemn the arrest of a former Cabinet minister whose political defection in 2014 triggered the fall of the government led by the brother of the current president. The protesters carried torches and candles as they urged the authorities to release Patali Champika Ranawaka. He was arrested last week over a 2016 traffic accident in which a young motorcyclist was seriously injured. A court has ordered his detention pending an investigation. Opposition lawmaker Akila Viraj Kariyawasam called Ranwaka's arrest politically motivated. [...]

[Colombo Gazette, Former Minister Rajitha Senaratne arrested in hospital, 27 December 2019](#)

[...] United National Party (UNP) Parliamentarian and former Health Minister, Rajitha Seneratne, was arrested by the Criminal Investigations Department (CID) at Lanka Hospital. [...] The Attorney General had earlier instructed the Criminal Investigations Department (CID) to arrest Seneratne over a controversial 'white van' press briefing in November, prior to the Presidential election. During the Presidential election campaign, Seneratne had brought before the media two men said to be drivers of a 'white van' used for abductions. [...]

[Tamil Guardian, Attempted attack on UPFA MP in Vavuniya, 2 January 2020](#)

[...] An attempted attack on UPFA [United People's Freedom Alliance] MP K Kader Masthan has reportedly left the parliamentarian's bodyguard hospitalised with injuries to his arm. The alleged attack happened on Sunday night when the MP was travelling towards Vavuniya town and his vehicle stopped in Pavatkulam for a member of his team to alight. Masthan's vehicle was reportedly set upon by a group wielding swords. [...]

Furthermore, the *Civil society organisations and government critics* section notes with regards to treatment of protestors in general that "Local sources told DFAT that participants in politically-sensitive protests in the north, particularly in relation to missing persons and land returns, are monitored and sometimes questioned by the authorities". However, this neglects to mention that protestors have been arrested or threatened with arrest, as the following illustrative sources available at the time of publication of the DFAT Sri Lanka report documented:

[INFORM, Repression of Dissent in Sri Lanka 1st January – 31st March 2019, 9 May 2019](#)

[...] A. Threats and Obstructions to Activism in the North

Activism in the North has met with comparatively (to the rest of the country) subtle but considerable and sustained repression. The families of the disappeared faced harassment in the form of threats of arrest; persons alleging to be the CID forcibly entered the house of a disappeared man's family; and, the Navy attempted to arbitrarily prevent activists from visiting Iranaitivu, where locals had recently regained access to their land after more than 25 years. In separate incidents, land rights protests at Keppapulavu were heavily surveilled by the armed forces on what appeared to be official cameras and by individual personal phones, presumably to intimidate the protesters. [...]

The organizers of the 1000 Movement which demands a daily minimum wage of Rs. 1000 for tea plantation workers faced various forms of harassment, attacks and even arrest. University student protests in Colombo were dispersed by police with tear gas and water cannons. Teachers protesting in a separate incident were similarly assaulted during demonstrations. In Puttalam, protesters were violently baton-charged, while in Colombo, a private TV station dismissed employees who had participated in a union meeting. [...]

[INFORM, Repression of Dissent in Sri Lanka Apr-June 2019, 3 September 2019](#)

[...] Executive Summary

[...] The repression of dissent in the North-East was observed during this period, as well as a continuous pattern for several years. Tamil students organizing memorial events for end of the war were threatened. [...]

A Tamil anti-disappearance activist who was very involved in a long term protest by families of disappeared was interrogated. Those protesting against land acquisition by a factory were also arrested and an anti-disappearance activist was subjected to interrogation. [...]

[OHCHR news, End of Mission Statement United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Mr. Clément Nyaletsossi Voulé, on his visit to Sri Lanka \(18-26 July 2019\), 26 July 2019](#)

[...] While noting the considerable efforts undertaken in transforming the police force into a well-trained and community policing force since the end of the war, the approach of the police in managing assemblies seems to rest on the negative perception that protests and demonstrations are generally a nuisance and should be prevented, instead of being treated as a fundamental right inherent to every person. [...]

During my meetings, I heard disturbing accounts of peaceful assemblies of groups mobilising around common concerns which were prevented from taking place, or which were met with physical and verbal violence at the hands of individuals, without public intervention. For example, individuals were prevented from taking part in a special prayer event at Vinayagar Temple, located in the premises of Kanniya hot water springs in Trincomalee, when their bus was repeatedly stopped for excessive periods of time at checkpoints. When they reached the fourth and final checkpoint on their journey, they were stopped and forbidden from travelling any further. Meanwhile, police obtained an injunction order from the court for public nuisance, which prevented individuals from accessing the site.

In another instance, representatives of 100 families which I met with in Keppapilavu stated that a court order had removed them from their protest site beside an army barracks (where they had been peacefully gathering for 792 days). They were forced to relocate to another location, while the court order instructed them to assemble only in groups of a limited size and to refrain from chanting slogans, citing army security concerns. The families had been gathering to demand the return of their land, which the army had occupied. While the families did not complain of any physical intimidation, they are psychologically affected by efforts to demoralise them and discourage them in their struggle. [...]

I also heard reports of protests met with force, water cannons and tear gas, in ways that seemed disproportionate. I understand that steps have been taken in relation to certain emblematic cases involving death at the hands of law enforcement officials to bring cases to trial, albeit many years after the event. I hope that accountability for the perpetrators and redress for the victims and their families will soon become reality. [...]

[Asian Forum for Human Rights and Development, From Ruki Fernando of Our Member INFORM Human Rights Documentation Centre, Sri Lanka – SRI LANKA: ‘People are scared of expressing themselves freely’, 27 July 2019](#)

[...] We have seen a large number of peaceful protests for rights by many groups such as students, farmers, families of disappeared people, people whose land is occupied by the military and people affected by the project such as landfills. In several of them, protesters have been attacked physically and people have been arrested and ill-treated in detention. [...]

Since the publication of the DFAT Sri Lanka report, sources continue to document harassment, arrests and assaults of protestors, for example:

[Tamil Guardian, Families decry surveillance as Sri Lankan intel out in force at disappeared protest, 11 December 2019](#)

[...] Families of the disappeared decried the surveillance and intimidation they endure at the hands of Sri Lankan security and intelligence forces, while Sri Lankan intelligence officers came out in force to photograph and carry out surveillance of a mass rally in Mullaitivu.

[...] Leaders of the protests, many of whom are vulnerable women, have been routinely attacked and threatened by suspected intelligence personnel since the roadside protests started and gained momentum almost three years ago. [...]

[INFORM, Repression of Dissent in Sri Lanka: Before and during COVID19 curfew, 30 May 2020](#)

[...] 1. Executive Summary

[...] In Colombo, protestors were assaulted and threatened with arrest by police and a temporary hut of protestors were taken down by police. Persons protesting on covid19 related issues were also arrested in Batticaloa and Kandy districts. A court order was issued to stop a student protest in Colombo and students in Jaffna University were stopped from entering the University to have a protest. [...]

4.2 Repression of freedom of assembly [...]

Before curfew: The relative tolerance of protests seen in previous months ended since the beginning of the month of February. The students of the University of Jaffna were refused entry to the university after they protested raising black flags against Independence Day. In Colombo, near to the Presidential Secretariat an “agitation site”, later called “demonstration site” was established as a

designated venue for the protests. On 24th February, Police assaulted protesting former employees of the National Housing Authority who blocked Galle Road near to the Presidential Secretariat. On 27th February, Police threatened peaceful protesters against microfinance loan schemes, that they will be arrested unless they move into the designated agitation site. A group of disabled soldiers who are continuing months long protest moved to the designated protest area and built a temporary hut for the protestors to stay and protest. The hut was forcefully removed by the Police. A group of student activists who were protesting in front of the ministry of higher education premises were issued a court order preventing them from protesting and they were later arrested. On 8th March, during an alms giving ritual at the Mullivaikkal beach held for the LTTE cadres who died in the war, the military had taken down the vehicle numbers and NIC numbers of the people who participated in this ritual. On 13th March 6 persons were arrested in Batticaloa for protesting against the transfer of a covid19 patient to the Batticaloa hospital. However no arrests were made in similar protests conducted in the South with the support of the pro-government politicians.

During curfew: On 21st of March, two prisoners were shot dead as they started a protest demanding to release them due to covid19 risks in the prison. On 9th April, hundreds of people in Doluwa, in the Kandy district, came to the road demanding food and relief in the context of the three-week-long indefinite curfew, seeming a spontaneous protest by people desperate for food and other essentials to sustain their lives. The next day, police had arrested one person who had participated in the protest and he has been remanded till 16th April 2020. [...]

Furthermore, no information is included in this section on the treatment of perceived government critics who have no affiliation. This is addressed briefly in the subsequent section on *Media* which makes the following assessment (emphasis added):

[DFAT, Country Report: Sri Lanka, 4 November 2019](#)

[...] Media

[...] 3.113 Since the change of government in 2015, internet bloggers have operated freely in Sri Lanka. Bloggers, particularly those engaged on sensitive issues associated with the war, may be monitored by the authorities, but are not the subject of physical violence. **DFAT is not aware of recent instances of bloggers who are critical of the government or the military being targeted because of their views.**

However, this is inconsistent with Freedom House, one of the sources described by DFAT as “other sources available at the time of the publication of the DFAT Sri Lanka report:

[Freedom House, Freedom on the Net: 2019 Sri Lanka, 4 November 2019](#)

[...] A number of people were detained for criticizing the police on social media during the coverage period. In February 2019, a man was charged with humiliating the police after allegedly posting Facebook comments on a fraudulent account that criticized the police. In January 2019, two men were charged with damaging public property and humiliating the police for posting a video on Facebook of themselves pretending to bribe a cardboard cutout of a traffic police officer. They were later released on bail. [...]

Nowhere in the DFAT is the treatment of other perceived critics addressed, as reported by other sources such as:

[Journalists for Democracy in Sri Lanka, Tamils protest arrest of doctor with “expertise to expose war crimes”, 27 August 2019](#)

[...] Tamils in northern Sri Lanka have been protesting the detention of a forensic expert who had provided crucial forensic evidence on several human rights abuse cases exposing the involvement of security forces. Director of the Palai hospital in the Kilinochchi district, Dr Sinnaiah Sivaruban, who is a Judicial Medical Officer (JMO), arrested by the military is been held in Terrorist Information Department (TID) custody since 18 August [2019]. [...]

Protesting Tamils who are strongly convinced that Dr Sivaruban was arrested due to his career as a Judicial Medical Officer (JMO) urged authorities to produce him in court. [...]

However, the Sinhala press was quick to go to town with claims of a plot to assassinate VIPs including the president, army commander and presidential hopeful Gotabaya Rajapaksa, with assistance from the now defunct Tamil Tigers.

“Sinnaiah Sivaruban arrested by security forces revealed that plans were afoot to assassinate Messrs Vinayagamurthi Mualitharan alias Karuna Amman and Douglas Devananda of EPDP,” the ultra-nationalist Divaina Sinhala newspaper said quoting unnamed TID and military intelligence sources. It claimed that the TID found a cache of explosives meant to be used in the “assassination”. [...]

[Sri Lanka Mirror, Jaffna Uni. Vice Chancellor removed, 7 May 2019](#)

[...] Jaffna University Vice Chancellor Ratnam Wigneswaran has been removed from his position from yesterday (06), says the University Board.

The Board stated that although Wigneswaran received a letter to resign from his post, no new vice chancellor has been appointed.

When Wigneswaran was questioned, he said that he was unable to comment on the matter and that he had received a letter from the Additional Secretary to the President regarding the removal from the position.

The Chairman and the Secretary of the Students Union of University of Jaffna was taken into custody recently when they were keeping photographs of the late LTTE leader Velupillai Prabhakaran and Anton Balasingham. [...]

The timing of the publication of the 4 November 2019 Sri Lanka DFAT report is surprising given that Presidential elections were scheduled to take place on 16 November 2019. The DFAT Sri Lanka report therefore fails to include information on electoral violence, which was reported to particularly target minority groups (see above on page 20). It also doesn't address the political climate following Rajapaksa's victory, including the series of senior appointments of persons documented to have been involved in human rights abuses, his take-over of functions normally handled by the police, the gutting of the Criminal Investigations Department which was investigating the Rajapaksas and official pardons including for a soldier convicted of massacring civilians. For details of these issues, see the following sections of the July 2020 ARC publication, Country report on Sri Lanka: *I.C.i.a Official Pardons Since November 2019* and *II.e. Executive Interference and Political Appointments*. The timing of the publication is all the more surprising as the Sri Lanka DFAT report highlights that sources had expressed concern should “Rajapaksa or an individual close to him” return to power [emphasis added]:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 2. BACKGROUND INFORMATION

[...] Political System [...]

Constitutional Crisis [...]

2.39 Rajapaksa retains popularity within the Sinhalese community, particularly for overseeing the defeat of the LTTE. However, Rajapaksa's 10-year presidency was also marked by democratic backsliding and accusations of corruption and human rights violations, including war crimes against the Tamils and harassment and arrest of government critics. On his appointment as prime minister in October 2018, Rajapaksa said he would protect the human rights of all citizens. **Local sources, Tamil and non-Tamil, expressed concern to DFAT that the human rights improvements achieved since 2015, including in relation to freedom of expression, could be reversed if Rajapaksa or an individual close to him returned to power.** The SLPP formally announced Mahinda Rajapaksa's brother, former Defence Secretary Gotabaya Rajapaksa, as its candidate for president on 11 August 2019. Mahinda Rajapaksa assumed leadership of the SLPP and accepted its nomination to be the party's next prime ministerial candidate on the same day. Mahinda Rajapaksa has led the opposition in parliament since December 2018. He is ineligible for the presidency, having served the maximum two terms [...]

Since the publication of the DFAT report, increased suppression of dissent has been documented, particularly in relation to persons perceived to criticise the government's response to COVID-19. For information on this, see ARC, Country report on Sri Lanka, July 2020, *V.e.iii Treatment of those*

perceived to oppose the government [without political affiliation] and IX. COVID-19 and impact on human rights.

Liberation Tigers of Tamil Eelam (LTTE)

Methodological observations

Country information has been presented as assertions without any reference to specific source material included in the body of the text or in footnotes, with the following exceptions (emphasis added):

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] Political Opinion (Actual or Imputed) [...]

Liberation Tigers of Tamil Eelam (LTTE) [...]

3.57 While the LTTE was comprehensively defeated, Sri Lankan authorities remain sensitive to its potential re-emergence. According to expert testimony provided to a 2013 hearing of the UK's Upper Tribunal on Immigration and Asylum, Sri Lankan authorities collect and maintain sophisticated intelligence on former LTTE members and supporters, including 'stop' and 'watch' electronic databases. DFAT understands these databases remain active. 'Stop' lists include names of those individuals that have an extant court order, arrest warrant or order to impound their Sri Lankan passport. 'Watch' lists include names of those individuals that the Sri Lankan security services consider to be of interest, including for suspected separatist or criminal activities. **The UK Home Office reported in June 2017** that the 'watch list' comprised minor offenders and former LTTE cadres. DFAT assesses those on a watch list are likely to be monitored. [...]

Rehabilitation [...]

3.62 **According to Sri Lankan Government statistics from March 2019**, 12,191 former LTTE members (including 2,265 women) had completed rehabilitation. At the time of publication, only one rehabilitation centre for former LTTE members remained operational (Poonthottam Rehabilitation Centre in Vavuniya, Northern Province). DFAT understands this centre currently houses one former LTTE member. Some centres previously used to rehabilitate former LTTE members have been redeployed for the purposes of rehabilitating drug addicts (see Rehabilitation of non-LTTE members). Official sources told DFAT the Poonthottam centre would remain open for the foreseeable future and be used on a needs basis, including

to rehabilitate drug addicts and non-rehabilitated former LTTE members that come to the attention of the authorities. Convicted former LTTE members currently held in other places of detention, including under the PTA, might – upon their release – also be sent for rehabilitation (local sources indicate there are more than 100 such individuals) [...]

3.65 Former LTTE members undergoing rehabilitation are permitted to make multiple visits to their family and receive family visits during their rehabilitation process. **In 2016, the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment** assessed that conditions in rehabilitation were considerably more humane than in prison. Local sources told DFAT that rehabilitation centres compared favourably to prisons, including from the point of view they were not overcrowded like prisons (see Detention and Prison).

3.66 **A July 2018 report of the UN Working Group on Arbitrary Detention** assessed there were 'systemic problems with deprivation of liberty' in connection with the Poonthottam Rehabilitation Centre and described the detention of former LTTE members for the purposes of rehabilitation therein as 'arbitrary'. The UN Working Group recommended that the Sri Lankan Government release detainees from the Poonthottam Rehabilitation Centre immediately and unconditionally, and close the centre as soon as possible [...]

Scarring

3.92 DFAT is aware of reports that people with war-related scarring are more likely to attract adverse attention from the Sri Lankan authorities. **An NGO, Freedom From Torture, reported in 2011** that an unidentified number of people were detained by the Sri Lankan authorities in April or May 2009

because their scarring was deemed evidence of LTTE membership. The cases raised by Freedom From Torture date from the immediate end of the war and DFAT is unaware of more recent evidence of individuals being detained because of scarring [...]

Moreover, this section of the DFAT report also includes vague source descriptions. For example:

- “According to military sources...” (para. 3.68)
- “Official sources...” (para. 3.62)
- “Local sources told DFAT...” (paras. 3.59, 3.65, 3.85)
- “Anecdotal evidence...” (para. 3.89)
- “Local sources estimate...” or “Local sources report...” (paras. 3.67, 3.90)
- “One source claimed...” (para. 3.67)
- “Some Tamil political leaders...raised allegations...” (para. 3.69)
- “Some Tamils with imputed LTTE links [...] continue to report...” (para. 3.75)
- “Multiple sources in the north told DFAT...” (para. 3.75)
- “A source that DFAT considers credible claimed...” (para. 3.75)
- “Some sources claimed...” (para. 3.76)
- “Local sources in the north...” (para. 3.89)

By sometimes using no source attributions or description and other times vague source descriptions or referring to specific source material, it may be inferred that the DFAT report suggests that some sources are more authoritative than others.

In the following examples the DFAT report states that it is unable to verify claims made by “some sources” or “local sources” (emphasis added):

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] Political Opinion (Actual or Imputed) [...]

Liberation Tigers of Tamil Eelam (LTTE) [...]

Monitoring of former LTTE members [...]

3.76 Where monitoring did occur, local sources claimed the authorities – usually undercover police officers or intelligence agents – used more subtle methods, for example inviting individuals to tea in public places and asking questions about their activities. The questioning did not involve violence. Telephone calls were also common. **Some sources claimed questioning was sometimes indirect, and involved questioning the neighbours of suspected former LTTE members. DFAT is unable to verify these claims.** Sources told DFAT that monitoring of former LTTE members was less extensive in the Eastern Province, insofar as many there had defected during the latter years of the war and aligned with the government as part of the Karuna Group/TMVP (see Security situation in the north and east). Formal complaints of harassment and monitoring by former LTTE members to the HRCSL have decreased significantly; few such complaints were received in 2018 [...]

Family members of LTTE

3.83 The Sri Lankan Government acknowledges that former LTTE members and their families may continue to face discrimination both within their communities and from government officials. **DFAT cannot verify claims that people have been arrested and detained because of their family connections with former LTTE members**, but understands that close relatives of high-profile former LTTE members who are wanted by Sri Lankan authorities may be subject to monitoring [...]

Arrest, Detention and Prosecution [...]

3.85 Modest numbers of former LTTE members continue to be detained and prosecuted within Sri Lanka’s criminal justice system. **According to local sources, more than 100 former LTTE members are currently being held in detention, including one who is undergoing rehabilitation (see Rehabilitation). DFAT is unable to verify independently the number of former LTTE members in places of detention other than rehabilitation centres [...]**

This example emphasises the previously made observation that it could be inferred that the DFAT questions the authority of the sources making such a claim.

Content-specific observations

Liberation Tigers of Tamil Eelam (LTTE)

In this section the DFAT report refers to authorities having a ‘Watch List’ including names of those it considers to be “suspected separatists” [emphasis added]:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims [...]

Political Opinion (Actual or Imputed) [...]

Liberation Tigers of Tamil Eelam (LTTE) [...]

3.57 While the LTTE was comprehensively defeated, Sri Lankan authorities remain sensitive to its potential re-emergence. According to expert testimony provided to a 2013 hearing of the UK’s Upper Tribunal on Immigration and Asylum, Sri Lankan authorities collect and maintain sophisticated intelligence on former LTTE members and supporters, including ‘stop’ and ‘watch’ electronic databases. DFAT understands these databases remain active. ‘Stop’ lists include names of those individuals that have an extant court order, arrest warrant or order to impound their Sri Lankan passport. ‘Watch’ lists include names of those individuals that the Sri Lankan security services consider to be of interest, including for **suspected separatist** or criminal activities. The UK Home Office reported in June 2017 that the ‘watch list’ comprised minor offenders and former LTTE cadres. DFAT assesses those on a watch list are likely to be monitored [...]

However, DFAT does not define further whom the Sri Lanka security services might consider as a “suspected separatist”.

Monitoring of former LTTE members / Former LTTE members living outside Sri Lanka

The DFAT report refers to the monitoring of “radical” elements of the diaspora in two instances [emphasis added]:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims [...]

Political Opinion (Actual or Imputed) [...]

Monitoring of former LTTE members

3.75 Some Tamils with imputed LTTE links (including those who fought for the LTTE or were part of its civilian administration) continue to report police monitoring and harassment. Multiple sources in the north told DFAT that former LTTE members, including those considered low-profile, are monitored to guard against the LTTE’s re-emergence, although monitoring today is less extensive and takes a more subtle form. A source that DFAT considers credible claimed the extent of monitoring depends on one’s former seniority within the LTTE; ongoing involvement with politically-sensitive issues, including protests relating to disappeared persons; and links to the Tamil diaspora, particularly **elements of the diaspora considered radical by the Sri Lankan Government**. Former LTTE members that fit this profile are more likely to be monitored by the authorities. In contrast, those who maintain a low-profile are considered less vulnerable to monitoring [...]

Former LTTE members living outside Sri Lanka [...]

3.82 The Sri Lankan Government has encouraged all Sri Lankans living overseas to return or invest in the Sri Lankan economy. DFAT assesses Sri Lankan authorities may monitor members of the Tamil diaspora returning to Sri Lanka, depending on their risk profile. Those who hold leadership positions

in Tamil diaspora groups, **particularly groups deemed by the Sri Lankan Government to hold radical views**; those who were formerly part of the LTTE, particularly in – but not necessarily limited to – high-profile roles; those who are suspected of raising funds for the LTTE during the war; and those who actively advocate for Tamil statehood would likely be of particular interest to the authorities. Those Tamils living abroad with links to the LTTE are unlikely to return to Sri Lanka voluntarily.

However, DFAT does not specify whom the government might consider as “radical” elements of the diaspora. It is not clear for example if it is meant to imply members of proscribed groups or those holding separatist views.

Former LTTE members living outside Sri Lanka

Similar to the observation made further above about the lack of information on the surveillance methods and means used by the Sri Lankan government in monitoring Tamils in the DFAT report [see p. 27 above], there is no further information provided on the monitoring of the diaspora, except that it occurs [emphasis added]:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims [...]

Tamils [...]

Monitoring, harassment, arrest and detention [...]

3.12 Communities in the north and east report that monitoring is undertaken by military intelligence and the Police Criminal Investigation Department, though in many cases officers dress in plain clothes and do not identify themselves. According to local sources, those participating in public gatherings and protests are often photographed. In the east, local informants within the community (including neighbours and business owners) reportedly undertake monitoring on behalf of the authorities. **Intelligence agencies also monitor links to foreign groups, including some in the Tamil diaspora [...]**

Information available at the time of drafting the DFAT report documents the monitoring and surveillance of the Sri Lankan diaspora:

[Morning Star, ‘Death threats were part of Sri Lankan diplomat’s job description,’ court told, 1 March 2019](#)

Making slit-throat gestures at Tamil protesters was part of the job description for Sri Lanka’s military attache in London, Westminster Magistrates Court heard [...]

Barrister Nicholas Wayne made the extraordinary argument in defence of his client, Brigadier Priyanka Fernando.

The soldier was caught on camera running his fingers across his throat while standing guard outside the Sri Lankan High Commission last year. The Brigadier left the country days later.

A British judge has since found him guilty of causing “harassment, alarm and distress” to Tamil complainants who brought a private prosecution, but the Brigadier claims he has diplomatic immunity. [...]

The court previously heard testimony from the Tamil complainants who said Sri Lankan diplomats repeatedly threatened and harassed them in London.

Their claims are strengthened by point one of Mr Fernando’s job description, which tasked him with “monitoring any anti-Sri Lanka activities in the UK and reporting to ... Intelligent [sic] agencies in Sri Lanka.”

The soldier was also expected to “establish contacts with appropriate defence and intelligent [sic] agencies in the UK [...]

[Sri Lanka Brief, JUDGE SAYS BRIGADIER PRIYANKA FERNANDO’S DEATH THREATS NOT COVERED BY DIPLOMATIC IMMUNITY, 2 March 2019](#)

The judge at Westminster Magistrates Court today concluded the Sri Lankan Brigadier, accused of making a death threat to Tamil protesters in London last year, was not covered by diplomatic immunity whilst making the gesture.

Stating the Brigadier Priyanka Fernando's threats were not part of his job description as Sri Lanka's then defence attache, and therefore not covered by diplomatic immunity, the judge adjourned the case until March 15.

During the court case the job description of a Sri Lankan defence attache was read out in court.

The job entails "monitoring any anti-Sri Lanka activities in the UK" and reporting to the ministry of defence, intelligence agencies, amongst others, as well as "monitoring any LTTE activities in the UK and devising appropriate plan with the coordination of intelligence agencies in Sri Lanka to counter it." [...]

[The Guardian, UK arrest warrant for Sri Lanka attache over throat-cut gestures revoked, 1 April 2019](#)

[...] An arrest warrant for a former Sri Lankan military attache, convicted of public order offences after making cut-throat gestures at protesters, has been revoked without a court hearing following Foreign Office involvement.

The private prosecution of Brig Priyanka Fernando has degenerated into extraordinary legal confusion, forcing the chief magistrate, Emma Arbuthnot, to take control of the case. [...]

Fernando was filmed making cut-throat gestures aimed at Tamil protesters outside the Sri Lankan high commission in London on 4 February 2018. Demonstrators were highlighting concerns about human rights violations against Sri Lanka's Tamil minority. Footage of the incident went viral on YouTube [...]

[Human Rights Watch, Two 'Snowden refugees' are safe. Now, what about the rest?, 1 April 2019](#)

[...] The publicity of the Snowden refugees' acts of kindness, and their location, made her fear for her life. Police from the Sri Lankan Criminal Investigation Department came to the slums of Hong Kong to search for the five Sri Lankans who helped Snowden, carrying their photographs, in late 2016. Ajith's family in Sri Lanka faced repeated visits from the military, with many more after his story became public [...]

Supun Kellapatha and his partner Nadeeka separately escaped death threats and politically motivated abuse in Sri Lanka, and met each other as they waited – in vain – for Hong Kong to grant them asylum. The couple now have two children, Dinath and Sethumdi, who are stateless. Ajith Debagama Kankanalamage escaped horrific and repeated torture by the Sri Lankan army, but his asylum request was also rejected by Hong Kong, which is ready to deport him to where his life is at risk. His family was threatened and harassed by police once his connection to Snowden, and location in Hong Kong, became known. Sri Lankan Criminal Investigation Department officers were spotted in Hong Kong searching for these five in late 2016, making the prospect of retaliation should they be repatriated all the more likely [...]

[Journalists for Democracy in Sri Lanka, Swiss legal debacle "triggered Sri Lanka's latest terrorists list", 2 August 2019](#)

Sri Lanka's most recent decision to declare a prominent international rights activist as a 'terrorist' may have been triggered by a landmark decision in the Swiss Federal Criminal Court, last year.

In an apparent bid to criminalize activists calling for state accountability, Sri Lanka has made use of a UN resolution to 'list' rights activist Viraj Mendis, a Sinhalese living in exile, as a 'fund raiser' for terrorism [...]

As the head of Germany based refugee rights group, International Human Rights Association (IMRV-Bremen), Viraj Mendis had been in the forefront of coordinating a powerful global solidarity campaign in support of Tamil activists who were accused by the Swiss authorities.

"We think the decision by the Swiss court last year is the reason," Viraj Mendis told JDS [...]

[International Truth and Justice Project, Press Release: Sri Lankan security agencies assaulting families of asylum seekers in UK, 24 October 2019](#)

Tamil asylum seekers in the UK say their families back home are being deliberately targeted by Sri Lankan security forces, shown photographs of them in demonstrations in London, threatened and in some cases physically assaulted. Spouses and parents in the villages of the north of Sri Lanka are being visited by police and army within days of the person in London giving a media interview or participating in a protest.

"This shows that surveillance in the UK of Tamils, who have been forced to go into exile, is being used to silence victims and witnesses," said the Executive Director of the International Truth and Justice Project, Yasmin Sooka, "state agencies wouldn't need to silence victims' families if they hadn't driven them out in the first place".

The Sri Lankan authorities monitor Tamil TV broadcasts from the UK and social media sites. In one recent case, security officials found the wife in her village in northern Sri Lanka of a man in the UK just days after he had given a TV interview in London. They warned her he should stop: "Your husband is doing unnecessary things abroad. If he goes there, he should be silent. We are saying this to you in a polite way but if other people come, they won't be so polite". She was also questioned about his postings on social media accounts. Another Tamil asylum seeker reported threats to his family in Mullaitivu from plain clothes officers of the Criminal Investigation Division (CID) following an interview he gave to the media. He says his father was physically assaulted.

The ITJP interviewed 26 Tamil men in the UK, all of them claiming asylum on the basis of post-war torture. [...] All reported that their families had been repeatedly visited by security services after they had fled the country – including some as recently as September 2019. The visits were mainly by plain clothes police officers but in some cases military intelligence or the Civil Security Department. Only about half of those interviewed said their families had tried to report the surveillance, threats or assaults to the police. [...]

Several men said their families were specifically warned not to report to the police the visits or were too frightened to do so. Most who tried said local police officers refused to accept a complaint as they had no eyewitnesses because everyone was too frightened to testify and they couldn't name the individuals responsible. They were also told there was no indication they were state actors if they were in plain clothes. In some cases police allegedly refused to accept complaints, saying "your sons are LTTE and trying to regroup the LTTE" or "such things don't happen". After participating in a protest in London in mid-2019, this man's parents in Sri Lanka were threatened but tried to report the incident despite warnings not to do so:

"My parents went to the police station to report it but the police wouldn't accept the complaint. They asked for the names of the people who had threatened them and they didn't have the names. There are various different intelligence officers who come on different occasions in plain clothes. Now my parents are alone at home and frightened because they live near an army camp."

Five interviewees said their families had registered complaints with the Human Rights Commission of Sri Lanka (HRCSL) but three were reportedly asked for a police report first which the police refused to provide.

"It's easy to assert that the ongoing flow of Tamils claiming asylum on the basis of torture is the work of a few corrupt security officers but reports of systematic intimidation of the victims' families belie such a theory," said Ms. Sooka. "These acts of surveillance, intimidation and continued persecution of families indicate the paranoia of the Government of Sri Lanka in wanting to shut down even relatively small protests abroad and penalising those who give interviews. In no way is this approach consistent with the narrative of "reconciliation" that has been fed to donors and diplomats" [...]

[UK Home Office, Report of a Home Office fact-finding mission to Sri Lanka, Conducted between 28 September and 5 October 2019, 20 January 2020](#)

[...] Annex D: Notes of meetings with sources [...]

Human Rights Activist 30 September 2019 [...]

Q. Are Tamils monitored abroad?

There is some monitoring. Anecdotally, the source cited one person who was arrested and detained for a few hours who had participated in a protest abroad. He was picked up at the airport in 2017/18 for protesting about the war in 2008/09 and this is the first time he had returned. A Norwegian-based Sri Lankan Tamil journalist (now a Norwegian citizen) was accused of writing against the government and judiciary and arrested in Jaffna in 2019. He was released but has a case pending against him. Tamils returning from abroad are generally monitored to see what they are doing, especially in the

North and East. Certain Tamils are subject to close scrutiny, e.g. political activists, journalists. But, in his experience, not all Tamils are monitored, and he knew of Tamils from the diaspora who had not encountered any difficulty [...]

it would be no surprise if such monitoring occurred abroad. The source cited official and unofficial Sri Lankan representatives had taken photos of human rights activists in the UN building in Geneva. He could not recall a random Tamil being stopped at the airport. He was not aware of anyone on the Watch list being stopped but has heard this happens anecdotally [...]

Journalist 1 2 October 2019 [...]

Q Are you aware of monitoring of returning Tamils?

Monitoring on return to Sri Lanka is possible if you are deemed to have done something against the government. Officers were placed amongst protesters in the UK to monitor and keep track of them. This is common practice as the government and military fear revenge [...]

Journalist 2 2 October 2019 [...]

Activists are probably monitored, have heard reports of diaspora activist facing intimidation when they return to Sri Lanka. TID/CID are at the airport and collect intelligence. It has not been the case for everyone and now its more prominent activists." [...]

Family members of LTTE

The DFAT report stated that family members of former LTTE members "may continue to face discrimination both within their communities and from government officials" and that high-level former LTTE members' family "may be subject to monitoring":

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 3. Refugee Convention Claims [...]

Family members of LTTE

3.83 The Sri Lankan Government acknowledges that former LTTE members and their families may continue to face discrimination both within their communities and from government officials. DFAT cannot verify claims that people have been arrested and detained because of their family connections with former LTTE members, but understands that close relatives of high-profile former LTTE members who are wanted by Sri Lankan authorities may be subject to monitoring. [...]

A report by the Sri Lanka Campaign for Peace and Justice published after the publication of the DFAT report documented an increase in intimidation and surveillance by families of the disappeared:

[Sri Lanka Campaign for Peace and Justice, Abandoned Promises? Preserving Human Rights and Pursuing Accountability in Gota's Sri Lanka, February 2020](#)

[...] The Promise [...]

Former LTTE combatants and Tamil disappearance activists continue to bear the brunt of the state's security apparatus. In December 2019, families of the disappeared protesting in the North and East of the country published a joint letter to the UN [...] which noted an increase in intimidation and surveillance by the military, including home visits and interrogations [...]

5. Other Considerations

Treatment of returnees

Methodological observations

Country information has been presented as assertions without any reference to specific source material included in the body of the text or in footnotes.

However, this section of the DFAT report includes vague source descriptions. For example:

- “According to local sources...” (para. 5.35)
- “Anecdotal evidence...” (para. 5.38)
- “Tamils told...DFAT...” (para. 5.46)

By sometimes using no source attributions or description and other times vague source descriptions or referring to specific source material, it may be inferred that the DFAT report suggests that some sources are more authoritative than others.

Content-specific observations

In the following examples the DFAT report states that it is unable to verify claims that when monitoring of returnees occurs this is specific to former LTTE cadres. DFAT also makes a broad statement that monitoring would not necessarily “endanger their safety and security” [emphasis added and highlighted]:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 5. Other Considerations [...]

Conditions for Returnees [...]

5.46 DFAT understands that some returnees, including returnees in the north and east with suspected LTTE links, have been the subject of monitoring by the authorities, involving visits to returnees’ homes and telephone calls by the Criminal Investigation Department. DFAT understands that most returnees, including failed asylum seekers, are not actively monitored on an ongoing basis. **DFAT is unable to verify whether monitoring, where it occurs, is specific to former LTTE cadres. DFAT is not aware of returnees, including failed asylum seekers, being treated in such a way that endangers their safety and security.** Tamils who had failed to secure asylum in Australia and since returned to the Northern Province told DFAT they had no protection concerns and had not experienced harassment by the authorities, nor received monitoring visits.

However, these two statements appear to be inconsistent with other sections of the DFAT report. Being monitored, as broadly detailed throughout the DFAT report including in the first sentence of this paragraph (highlighted in blue) that ‘visits and telephones to returnees’ homes do occur’ – is a form of harassment and thus can be understood as ‘endangering safety and security’.

This section of the DFAT report is divided into the following sub-sections: Exit and Entry Procedures; Offences under the Immigrants and Emigrants Act (I&E Act); and Conditions for Returnees. No information is included here or elsewhere in the DFAT report on instances of denial of entry of returning Sri Lankans as reported by Tamil Guardian available at the time of drafting the DFAT report:

[Tamil Guardian, Former Tamil political activist denied entry to Sri Lanka, 30 July 2019](#)

Former Tamil political activist, Mr Kaviraj Shanmuganathan, was denied entry into Sri Lanka upon arrival at Bandaranaike International Airport [...] Upon enquiry, he was told he was denied entry as he was listed as someone who worked against the sovereignty and interests of the country. He was then told that he could voluntarily return [sic] a country of his choice or go back to the UK where he could make an application to visit with the permission of Sri Lanka’s Defence Ministry. He would need to contact Sri Lanka’s High Commission in London. Tamilpolity reports that Shanmuganathan has chosen to go to Chennai where he will consider the options available to him. His family, however, have been granted entry into Sri Lanka. Shanmuganathan was a leader of the protests in London between April to May 2009 which demanded a ceasefire in Sri Lanka and he also lobbied for an international independent investigation into the mass atrocities committed in the last stages of the war. Shanmuganathan quit politics and engaged in humanitarian activities to support war victims in Tamil areas [...]

The DFAT report does not include any information on the situation and treatment of family members of diaspora members living abroad and suspected of sending financial support in relation to projects assisting civil war victims or Tamils in general. A source published after the publication of the DFAT report noted however, that such family members faced increased interrogations and harassment since the November 2019 elections:

[Swiss Refugee Council, Sri Lanka: Aktuelle politische Situation, Überwachung der Diaspora, Geldsammeln im Ausland für Kriegsoffer, 10 April 2020](#)

[...] 4 Gefährdung bei Rückkehr wegen im Ausland getätigter Geldsammelaktivitäten für Kriegsoffer [...]

[Note: Informal translation from German to English provided by a COI researcher: [...] The organization of contact person D in the UK [who works for an international Tamil Diaspora organisation] is aware of cases in which the Sri Lankan authorities interrogated family members of diaspora members living abroad who provided a range of financial support – from support to investigate war crimes to humanitarian projects for Tamils. The interrogations and harassment of Family members of diaspora members increased significantly after the change of government in November [2019] (email information from April 6, 2020 from contact person D) [...] Contact person D also pointed out that family members of diaspora members were interrogated about their financial support to Tamil-related projects (email information from contact person D on April 6, 2020) [...]]

Limited information is included in the section on returnees on the nature of questioning they might experience on arrival. The following excerpt describes an “investigative process” to identify suspected criminals or terrorists and that extensive enquiries might be undertaken [emphasis added]:

[Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report Sri Lanka, 4 November 2019](#)

[...] 5. Other Considerations [...]

TREATMENT OF RETURNEES

Exit and Entry Procedures

[...] 5.33 For returnees travelling on temporary travel documents, police undertake **an investigative process** to confirm identity. This would **identify someone trying to conceal a criminal or terrorist background**, or trying to avoid court orders or arrest warrants. **This often involves interviewing the returning passenger, contacting police in their claimed hometown, contacting claimed neighbours and family, and checking criminal and court records.** All returnees are subject to these standard procedures, regardless of ethnicity and religion. DFAT understands detainees are not subject to mistreatment during processing at the airport.

However, it is not made clear if whether the returnee would be held at the airport and/or detained whilst such potentially lengthy enquiries take place, nor in what conditions they might be held in.

Final observation on the DFAT report

The DFAT report fails to include any information on the treatment of actual or imputed members of the Transnational Government of Tamil Eelam (TGTE) – a proscribed political group operating outside of Sri Lanka - despite country information suggesting that the return of TGTE members may result in their adverse treatment, especially as they may be accused of LTTE links. See the following sources for such information:

[Colombo Telegraph, Investigating The Truth Of What Happened To Enforced Disappeared Tamils In Sri Lanka, 30 August 2019](#)

[...] The Transnational Government of Tamil Eelam (TGTE) is a political formation of democratically elected members, living outside Sri Lanka, dedicated to securing justice and freedom for the Tamil people in the North and East of the island in the Tamil homeland [...]

[UK Home Office, Report of a Home Office fact-finding mission to Sri Lanka, Conducted between 28 September and 5 October 2019, 20 January 2020](#)

[...] Annex D: Notes of meetings with sources [...]

Human Rights Activist 30 September 2019 [...]

As a proscribed group, yes', TGTE [Transnational Government of Tamil Eelam] members would be at risk, as 'The TGTE say genocide is occurring so they would be at risk of arrest or other reprisals' [...]

Journalist 1 2 October 2019 [...]

The TGTE does not have much recognition in Sri Lanka. It formed after the defeat of the LTTE. At that time, it was seen as a big thing but now it's seen as an extreme, impractical organisation and is not taken seriously. It may be problematic for genuine members or supporters as the TGTE is banned in Sri Lanka [...]

Journalist 2 2 October 2019 [...]

A high profile TGTE member returning to Sri Lanka would face arrest and be accused of LTTE links; the association with the LTTE would lead to arrest as it is seen as an organisation attempting to disrupt the post-war situation and as attempting to instigate violence, encouraging the take up of arms. They would definitely be questioned [...]

Attorney General Department, 3 October 2019 [...]

The TGTE is proscribed in Sri Lanka due to its links with the LTTE. If returning TGTE supporters have committed an offence here then we can take action but if they arrived peacefully into the country, they wouldn't face any trouble" [...]