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# COI Update

# Vol. 237

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This document provides an update of UK Country Guidance case law, UK Home Office publications and developments in refugee producing countries (focusing on those which generate the most asylum seekers in the UK) between 26 May and 29 June 2021.

*Ctrl + click the hyperlinked text to access the documents*

## **Legal Update**

### **Sri Lanka**

#### **[KK and RS \(Sur place activities: risk\) Sri Lanka CG \[2021\] UKUT 130 \(IAC\)](#)**

*In broad terms, [GJ and Others \(post-civil war: returnees\) Sri Lanka CG \[2013\] UKUT 319 \(IAC\)](#) still accurately reflects the situation facing returnees to Sri Lanka. However, in material respects, it is appropriate to clarify and supplement the existing guidance, with particular reference to sur place activities.*

*The country guidance is restated as follows:*

- (1) The current Government of Sri Lanka (“GoSL”) is an authoritarian regime whose core focus is to prevent any potential resurgence of a separatist movement within Sri Lanka which has as its ultimate goal the establishment of Tamil Eelam.*
- (2) GoSL draws no material distinction between, on the one hand, the avowedly violent means of the LTTE in furtherance of Tamil Eelam, and non-violent political advocacy for that result on the other. It is the underlying aim which is crucial to GoSL’s perception. To this extent, GoSL’s interpretation of separatism is not limited to the pursuance thereof by violent means alone; it encompasses the political sphere as well.*
- (3) Whilst there is limited space for pro-Tamil political organisations to operate within Sri Lanka, there is no tolerance of the expression of avowedly separatist or perceived separatist beliefs.*
- (4) GoSL views the Tamil diaspora with a generally adverse mindset, but does not regard the entire cohort as either holding separatist views or being politically active in any meaningful way.*
- (5) Sur place activities on behalf of an organisation proscribed under the 2012 UN Regulations is a relatively significant risk factor in the assessment of an individual’s profile, although its existence or absence is not determinative of risk. Proscription will entail a higher degree of adverse interest in an organisation and, by extension, in individuals known or perceived to be associated with it. In respect of organisations which have never been proscribed and the organisation that remains de-proscribed, it is reasonably likely that there will, depending on whether the organisation in question has, or is perceived to have, a separatist agenda, be an adverse interest on the part of GoSL, albeit not at the level applicable to proscribed groups.*
- (6) The Transnational Government of Tamil Eelam (“TGTE”) is an avowedly separatist organisation which is currently proscribed. It is viewed by GoSL with a significant degree of hostility and is perceived as a “front” for the LTTE. Global Tamil Forum (“GTF”) and British Tamil Forum (“BTF”) are also currently proscribed and whilst only the former is perceived as a “front” for the LTTE, GoSL now views both with a significant degree of hostility.*
- (7) Other non-proscribed diaspora organisations which pursue a separatist agenda, such as Tamil Solidarity (“TS”), are viewed with hostility, although they are not regarded as “fronts” for the LTTE.*

(8) GoSL continues to operate an extensive intelligence-gathering regime in the United Kingdom which utilises information acquired through the infiltration of diaspora organisations, the photographing and videoing of demonstrations, and the monitoring of the Internet and unencrypted social media. At the initial stage of monitoring and information gathering, it is reasonably likely that the Sri Lankan authorities will wish to gather more rather than less information on organisations in which there is an adverse interest and individuals connected thereto. Information gathering has, so far as possible, kept pace with developments in communication technology.

(9) Interviews at the Sri Lankan High Commission in London (“SLHC”) continue to take place for those requiring a Temporary Travel Document (“TTD”).

(10) Prior to the return of an individual traveling on a TTD, GoSL is reasonably likely to have obtained information on the following matters:

- i. whether the individual is associated in any way with a particular diaspora organisation;
- ii. whether they have attended meetings and/or demonstrations and if so, at least approximately how frequently this has occurred;
- iii. the nature of involvement in these events, such as, for example, whether they played a prominent part or have been holding flags or banners displaying the LTTE emblem;
- iv. any organisational and/or promotional roles (formal or otherwise) undertaken on behalf of a diaspora organisation;
- v. attendance at commemorative events such as Heroes Day;
- vi. meaningful fundraising on behalf of or the provision of such funding to an organisation;
- vii. authorship of, or appearance in, articles, whether published in print or online;
- viii. any presence on social media;
- ix. any political lobbying on behalf of an organisation;
- x. the signing of petitions perceived as being anti-government.

(11) Those in possession of a valid passport are not interviewed at the SLHC. The absence of an interview at SLHC does not, however, discount the ability of GoSL to obtain information on the matters set out in (10), above, in respect of an individual with a valid passport using other methods employed as part of its intelligence-gathering regime, as described in (8). When considering the case of an individual in possession of a valid passport, a judge must assess the range of matters listed in (10), above, and the extent of the authorities’ knowledge reasonably likely to exist in the context of a more restricted information-gathering apparatus. This may have a bearing on, for example, the question of whether it is reasonably likely that attendance at one or two demonstrations or minimal fundraising activities will have come to the attention of the authorities at all.

(12) Whichever form of documentation is in place, it will be for the judge in any given case to determine what activities the individual has actually undertaken and make clear findings on what the authorities are reasonably likely to have become aware of prior to return.

(13) GoSL operates a general electronic database which stores all relevant information held on an individual, whether this has been obtained from the United Kingdom or from within Sri Lanka itself.

*This database is accessible at the SLHC, BIA and anywhere else within Sri Lanka. Its contents will in general determine the immediate or short-term consequences for a returnee.*

*(14) A stop list and watch list are still in use. These are derived from the general electronic database.*

*(15) Those being returned on a TTD will be questioned on arrival at BIA. Additional questioning over and above the confirmation of identity is only reasonably likely to occur where the individual is already on either the stop list or the watch list.*

*(16) Those in possession of a valid passport will only be questioned on arrival if they appear on either the stop list or the watch list.*

*(17) Returnees who have no entry on the general database, or whose entry is not such as to have placed them on either the stop list or the watch list, will in general be able to pass through the airport unhindered and return to the home area without being subject to any further action by the authorities (subject to an application of the HJ (Iran) principle).*

*(18) Only those against whom there is an extant arrest warrant and/or a court order will appear on the stop list. Returnees falling within this category will be detained at the airport.*

*(19) Returnees who appear on the watch list will fall into one of two sub-categories: (i) those who, because of their existing profile, are deemed to be of sufficiently strong adverse interest to warrant detention once the individual has travelled back to their home area or some other place of resettlement; and (ii) those who are of interest, not at a level sufficient to justify detention at that point in time, but will be monitored by the authorities in their home area or wherever else they may be able to resettle.*

*(20) In respect of those falling within sub-category (i), the question of whether an individual has, or is perceived to have, undertaken a "significant role" in Tamil separatism remains the appropriate touchstone. In making this evaluative judgment, GoSL will seek to identify those whom it perceives as constituting a threat to the integrity of the Sri Lankan state by reason of their committed activism in furtherance of the establishment of Tamil Eelam.*

*(21) The term "significant role" does not require an individual to show that they have held a formal position in an organisation, are a member of such, or that their activities have been "high profile" or "prominent". The assessment of their profile will always be fact-specific, but will be informed by an indicator-based approach, taking into account the following non-exhaustive factors, none of which will in general be determinative:*

*i. the nature of any diaspora organisation on behalf of which an individual has been active. That an organisation has been proscribed under the 2012 UN Regulations will be relatively significant in terms of the level of adverse interest reasonably likely to be attributed to an individual associated with it;*

*ii. the type of activities undertaken;*

*iii. the extent of any activities;*

*iv. the duration of any activities;*

*v. any relevant history in Sri Lanka;*

*vi. any relevant familial connections.*

(22) *The monitoring undertaken by the authorities in respect of returnees in sub-category (ii) in (19), above, will not, in general, amount to persecution or ill-treatment contrary to Article 3 ECHR.*

(23) *It is not reasonably likely that a returnee subject to monitoring will be sent for “rehabilitation”.*

(24) *In general, it is not reasonably likely that a returnee subject to monitoring will be recruited as an informant or prosecuted for a refusal to undertake such a role.*

(25) *Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or are associated with publications critical of the government, face a reasonable likelihood of being detained after return, whether or not they continue with their activities.*

(26) *Individuals who have given evidence to the LLRC implicating the Sri Lankan security forces, armed forces, or the Sri Lankan authorities in alleged war crimes, also face a reasonable likelihood of being detained after their return. It is for the individual concerned to establish that GoSL will be aware of the provision of such evidence.*

(27) *There is a reasonable likelihood that those detained by the Sri Lankan authorities will be subjected to persecutory treatment within the meaning of the Refugee Convention and ill-treatment contrary to Article 3 ECHR.*

(28) *Internal relocation is not an option within Sri Lanka for a person at risk from the authorities.*

(29) *In appropriate cases, consideration must be given to whether the exclusion clauses under Article 1F of the Refugee Convention are applicable.*

#### **APPLICATION OF THE PRINCIPLE IN *HJ (IRAN)***

*It is essential, where appropriate, that a tribunal does not end its considerations with an application of the facts to the country guidance, but proceeds to engage with the principle established by *HJ (Iran)* [2010] UKSC 31; [2010] 1 AC 596, albeit that such an analysis will involve interaction with that guidance.*

*When applying the step-by-step approach set out in paragraph 82 of *HJ (Iran)*, careful findings of fact must be made on the genuineness of a belief in Tamil separatism; the future conduct of an individual on return in relation to the expression of genuinely held separatist beliefs; the consequences of such expression; and, if the beliefs would be concealed, why this is the case.*

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## **China**

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Sources consulted for annual reports: Amnesty International; Freedom House; Human Rights Watch; U.S. Department of State

Additional useful COI databases for case-specific country research (non-exhaustive):

- [Asylos's research notes](#) [Subscription only]
- [COI Forum](#) [Subscription only]
- [EASO COI Portal](#) [European Asylum Support Office's portal]
- [Electronic Immigration Network](#) [Subscription only]
- [ECOI.net](#) [European Country of Origin Information Network]
- [Refworld](#) [UNHCR's portal]
- [ReliefWeb](#)

For useful sources arranged by theme consult ARC Foundation's free [Thematic COI Sources toolkit](#).