



Australian Government

Department of Foreign Affairs and Trade



# DFAT Country Report

Sri Lanka

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# Map



# 1. Purpose and Scope

- 1.1 This country report has been prepared by the Department of Foreign Affairs and Trade (DFAT) for protection status determination purposes only. It provides DFAT's best judgment and assessment at time of writing and is distinct from Australian Government policy with respect to Sri Lanka. The country report replaces the previous DFAT Country Report on Sri Lanka dated 3 October 2014.
- 1.2 The report does not represent an exhaustive country overview and has been prepared with regard to the current caseload for decision makers in Australia. The report does not contain policy guidance for decision makers.
- 1.3 Ministerial Direction Number 56 of 21 June 2013 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 processes, 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 based on DFAT's on-the-ground knowledge and discussions with a range of sources. It takes into account relevant and credible open source reports. Where DFAT does not refer to a specific source of a report or allegation, this may be to protect the source.
- 1.5 For more information, see the October 2014 DFAT Thematic Report on People with Links to the Liberation Tigers of Tamil Eelam.

## 2. Background Information

### Recent History

- 2.1 Ceylon achieved independence as a dominion of the United Kingdom in 1948. As a result of a constitutional change in 1972, the country became an independent republic and changed its name to Sri Lanka. Starting in 1983, the Liberation Tigers of Tamil Eelam (LTTE) began a military campaign with the main aim of establishing a separate Tamil state, Tamil Eelam, in the north and east. A serious civil conflict, broken only by a ceasefire from 2002 until 2006, lasted until May 2009, when the Government announced its military victory over the LTTE and complete territorial control over Sri Lanka. Over the course of the conflict hundreds of thousands of people were displaced and tens of thousands of people were killed.
- 2.2 In May 2010, then President Mahinda Rajapaksa appointed a Lessons Learnt and Reconciliation Commission (LLRC) to investigate events from the failure of the ceasefire agreement in February 2002 to the end of the conflict in May 2009. The LLRC report was tabled in Parliament on 16 December 2011. The Government released a National Action Plan to implement the recommendations of the LLRC report on 26 July 2012 (the National Action Plan).
- 2.3 On 8 January 2015, Maithripala Sirisena defeated former President Mahinda Rajapaksa in the presidential election. Sirisena won 51.3 per cent of the vote with historically high voter turnout of 81.5 per cent. He campaigned on a democratic reform, good governance and anti-corruption platform. An early act of the new Sirisena government has been to establish a Special Presidential Task Force on Reconciliation charged with “healing the wounds of mistrust and social and cultural stress generated from extended conflicts and violence between different communities in Sri Lanka”. As of 13 February 2015, it was not clear to what extent the new taskforce’s mandate would refer to the recommendations of the LLRC. However, President Sirisena’s 4 February 2015 Declaration for Peace, which paid respect to all citizens of all ethnicities and religions who had lost their lives due to the civil conflict, went some way towards implementing one of the key recommendations of the LLRC. It also contained a pledge to advance reconciliation, justice and equality for all citizens.

### Demography

- 2.4 According to the Department of Census and Statistics, in 2012 Sri Lanka had a population of approximately 20.2 million. Sri Lanka’s reported average population growth rate was one per cent per annum between 1981 (the last whole-of-island census) and 2012.
- 2.5 Approximately 29 per cent of the population lives in the Western Province (composed of the districts of Colombo, Gampaha and Kalutara) where Sri Lanka’s commercial capital, Colombo, and political capital, Sri Jayawardenapura Kotte, are located. Approximately five per cent of Sri Lankans reside in the Northern Province and 7.6 per cent in the Eastern Province. The remainder of the population live in Sri Lanka’s other provinces.
- 2.6 Sri Lanka is a multi-ethnic society consisting of Sinhalese, Tamil (of both Sri Lankan and Indian origin), Sri Lankan Moor, Burgher, Malay, Sri Lanka Chetty and Bharatha. Ethnic groups can be identified by their language, religion or race.
- 2.7 Sinhalese are the largest ethnic grouping in Sri Lanka. According to the census, 74.9 per cent of the population are Sinhalese. Sinhalese are distinguished primarily by their language (Sinhala). The majority are Buddhists.
- 2.8 Sri Lanka Tamils are the next largest ethnic group, representing 11.2 per cent of the population. Sri Lanka Tamils are characterised by their language, Tamil. The majority of Sri Lanka Tamils are

Hindus. According to the 2012 Census, 43 per cent of Sri Lanka Tamils reside in the Northern Province, where they constitute approximately 93 per cent of the residents. Just over a quarter of Sri Lanka Tamils reside in the Eastern Province and 14.8 per cent in the Western Province (which includes the district of Colombo).

- 2.9 In addition to Sri Lankan Tamils, Tamils of Indian origin represent 4.2 per cent of the Sri Lankan population, the majority of whom are also characterised by their language, Tamil, and their Hindu religion. Indian Tamils are sometimes known as 'Hill-country Tamils' or 'Up-country Tamils'. Fifty-seven per cent live in the Central Province. During the 1970s and 1980s, Indian Tamils were progressively granted Sri Lankan citizenship rights or voluntarily repatriated to India.
- 2.10 The third largest ethnic group are Sri Lanka Moors who represent 9.3 per cent of the population. Sri Lanka Moors speak Tamil and are generally Muslim. The majority of Sri Lanka Moors live in the Eastern Province.
- 2.11 Four major religions are practiced in Sri Lanka: Buddhism; Hinduism; Islam; and Christianity (mainly Roman Catholicism). According to the census, 70.2 per cent of the population are Buddhist, 12.6 per cent Hindu, 9.7 per cent Muslim, 6.1 per cent Roman Catholic and 1.3 per cent other Christian denominations, with less than 10,000 from other religions. Buddhists generally follow the Theravada tradition. The majority of Muslims are Sunnis, although there are a small number of Shias, including members of the Bohra community.
- 2.12 Buddhists are concentrated in the southern, central and eastern areas of Sri Lanka. The Northern Province is predominately Hindu. Muslims are predominately located in the Eastern, Western and North-Western Provinces. Christians are concentrated in the Western and North-Western Provinces.

## Economic Overview

- 2.13 The Sri Lankan economy has been growing steadily in recent years. Gross Domestic Product (GDP) in 2013 was estimated to be approximately USD 65 billion—approximately USD 3,100 per capita—putting it ahead of most other South Asian countries. According to the International Monetary Fund (IMF), annual GDP growth averaged around six per cent between 2004 and 2009. Since the end of the conflict, Sri Lanka experienced stronger levels of economic growth of approximately eight per cent in 2010 and 2011, falling back to approximately six per cent in 2012 and 2013. The rate of inflation has varied greatly in recent years, but was almost eight per cent in 2013.
- 2.14 Sri Lanka's industry structure has shifted from a reliance on agriculture to an increasing emphasis on the services and manufacturing sectors. The services sector accounts for almost 60 per cent of GDP. Manufacturing, which accounts for almost 30 per cent of GDP, is dominated by the garment industry. The agriculture sector, though decreasing in economic importance, accounts for approximately 11 per cent of national output and employs more than one-third of the workforce. The public sector remains large, and continues to dominate in the financial, utilities, health and education sectors.
- 2.15 In January 2015, the IMF noted that public debt and debt service remain high by international comparison, reserves are limited, tax revenues are low, and medium-term sustainability depends heavily on continued growth and a positive external environment. Sustaining Sri Lanka's growth would require a continued focus on macroeconomic stability, high and sustained investment in infrastructure and human capital, and continued progress in fiscal consolidation and debt reduction.
- 2.16 Sri Lanka's exports (mainly garments, tea and rubber) were valued at USD 10.4 billion in 2013. Sri Lanka imports mainly oil, textiles, machinery and food, valued at USD 18 billion which meant Sri Lanka ran a large trade deficit in 2013. Large numbers of Sri Lankans work abroad and returned approximately USD 5.4 billion in remittances to Sri Lanka in 2012, the major source of foreign exchange earnings.
- 2.17 In December 2014, Transparency International ranked Sri Lanka 85th out of 174 countries in its Global Corruption Perception Index. There are credible reports of corruption in the public sector. The Sirisena government, which campaigned on an anti-corruption platform, has established a corruption commission to look into numerous allegations of corruption during the Rajapaksa government.
- 2.18 Sri Lanka ranked 73rd out of 187 countries in the United Nations' 2014 Human Development Index, the highest in South Asia. However, there is a continued imbalance in economic development

and the distribution of wealth in the country. Although conflict-affected areas in the north and east are recovering, many people in these and other areas remain economically vulnerable.

## Economic conditions in the north and east

- 2.19 During the civil conflict, there were very limited trade and investment links between the north and the east and the rest of the Sri Lankan economy. However, with the end of the conflict and the opening of the economy, economic growth has been strongest in the Northern Province, off a relatively low base. This is due in part to post-conflict reconstruction, particularly in the infrastructure, transport, agriculture and fishery sectors. This has resulted in broad benefits for the majority of the population living there, particularly through reductions in the cost of living.
- 2.20 With the opening of the economy, the introduction of competition has meant that some industries in the north are now only marginally viable. The agriculture sector, in particular, has struggled to compete with lower-cost imports from the south and elsewhere. Many major infrastructure projects, such as the rebuilding of the northern network of railways and the port at Kankasanthurai have been awarded to foreign companies or those based in the south, due in part to their greater capacity to undertake major works.
- 2.21 Local communities in the north have also complained about military involvement in commercial enterprises which they allege undercut local enterprises. DFAT has observed a number of commercial businesses in the north operated by the military, including an internal airline, hotels and road-side rest-stops, though these are also found in other parts of the country. A survey by the United Nations' High Commissioner for Refugees (UNHCR) of returned Internally-Displaced People (IDPs) in the north in June 2013 indicated the military was involved in commercial enterprises and 18 per cent said the military was involved in fishing or farming in their area.
- 2.22 As of 13 February 2015, the new Sri Lankan Government was publicly claiming that involvement of the military in civilian activities in the north had ceased.

## Employment

- 2.23 Partly as a result of recent public investment in infrastructure, the formal unemployment rate in Sri Lanka has fallen from 5.8 per cent in 2009 to around 4.5 per cent in the second quarter of 2014. Between 2005 and 2012, the rate of unemployment in the north fell from 6.1 per cent to 5.2 per cent and in the east from 15.5 per cent to 4.9 per cent. Other estimates by the independent Sri Lanka-based Point Pedro Institute using a different methodology suggest that actual rates of unemployment are much higher, ranging from 21 per cent in Sri Lanka's Western Province to 33 per cent in the Eastern Province.
- 2.24 More than 250,000 Sri Lankans leave every year to seek employment abroad and as of 2013, a total of more than two million Sri Lankans were working abroad, generally to seek higher wages than those available in Sri Lanka. Low rates of formal unemployment and the high numbers of Sri Lankans seeking employment abroad have resulted in upwards wage pressures, particularly in certain high-skilled sectors.
- 2.25 DFAT considers that relatively strong rates of economic growth and formal unemployment statistics mask a broader frustration in Sri Lanka about a lack of economic opportunities, including for well-paid employment, access to government jobs or university entrance. These sentiments were expressed frequently during the campaign for the January 2015 presidential election. This view is also supported by a survey conducted by the Development Policy Centre at the Australian National University on behalf of the Australian Government published in October 2013. The survey found that an overwhelming majority of those intending to leave Sri Lanka and travel to Australia by irregular means cited economic reasons for their decision. This included 86 per cent who said they wanted to leave Sri Lanka because of 'Australia's job opportunities' and 84 per cent who cited 'a lack of job opportunities in Sri Lanka'. In summary, DFAT assesses that perceptions of a lack of economic opportunity, particularly in the north and east, acts as a significant 'push factor' for external migration.

## Education

- 2.26 Public primary and secondary schooling in Sri Lanka is generally very good. High rates of primary school enrolment (98 per cent) and completion (95 per cent) have resulted in high levels of literacy

(91 per cent). Education outcomes tend to be lower in the north and east, mostly as a result of the destruction of infrastructure and loss of human capital during the conflict.

2.27 Where qualified teachers are available, schools offer students and their families the choice of education in either Sinhala or Tamil. Tamil-language tuition is available both in the north and in the south (see 'Ethnicity', below). English is a course of study for all students from grade one.

2.28 University entrance in Sri Lanka is awarded both according to merit and by entrance scores modified to take account of a district's socio-economic indicators.

## Health Care

2.29 Public health care is generally free in Sri Lanka. Health outcomes are characterised by high life expectancy (75 years) and a low rate of infant mortality (14 per 1,000 live births), figures comparable to those of developed countries. According to the World Bank, this is due, in part, to a strong focus on the cost-effective preventative and public health service, combined with a reasonable level of access to curative services. Health outcomes tend to be worse in the north and east, partly as a result of the destruction of infrastructure and loss of human capital during the conflict.

## Political System

2.30 Sri Lanka is a Democratic Socialist Republic. The President is directly elected and is Head of State, Head of Government and Commander-in-Chief of the armed forces. Sri Lanka's President, Maithripala Sirisena, was elected to office in January 2015. He was formally sworn in on 9 January, along with the leader of the United National Party (UNP), Ranil Wickremesinghe, as Prime Minister. As of 13 February 2015, legislation was being drafted to realise President Sirisena's commitment to introduce amendments to the Constitution to transfer executive powers exercised by the President to the Prime Minister, the Cabinet of Ministers and to Parliament. A central commitment of Sirisena's election manifesto was to reduce the powers of the Executive Presidency and place a limit on terms in office (which had been removed by former President Rajapaksa in 2010). The manifesto also refers to plans to establish independent commissions for the judiciary, police, elections, auditing institutions and office of the Attorney-General.

2.31 The Sri Lankan Parliament consists of 225 members, of whom 196 are directly elected on a district basis and the rest by proportional representation. The present Parliament was elected at the last general election held in April 2010. The now opposition United People's Freedom Alliance (UPFA) won 144 seats and the then opposition UNP won 60 seats. Other seats were divided among the Tamil National Alliance (TNA—which generally contests elections as the Illankei Tamil Arasu Kachchi), which won 14 seats and the Democratic National Alliance, which won seven seats. Following the January 2015 presidential election, President Sirisena has the support of at least 188 members of parliament after the Sri Lanka Freedom Party (SLFP) recognised him as head of the party. Following implementation of the new Government's 100 day program, Parliament is scheduled to be dissolved on 23 April 2015, with parliamentary elections likely in June 2015.

2.32 The next tier of the Sri Lankan political structure consists of provincial councils governing the nine provinces and over 300 local councils at the grassroots level. The TNA has a majority of seats in the Northern Provincial Council. After the January 2015 presidential elections, the Uva Provincial Council was taken over by a UNP Chief Minister and the UPFA supported a Sri Lanka Muslim Congress (SLMC) Chief Minister in the Eastern Provincial Council. All other provincial councils are governed by the UPFA. The vast majority of local councils are also run by the UPFA (see also 'Political Opinion', below).

## Security Situation

2.33 The conflict between the Government and the LTTE ended in May 2009 with the military defeat of the LTTE. The security situation in Sri Lanka has greatly improved as a result—no terrorist or large-scale military attacks have occurred since the end of the conflict. Sri Lankan security forces—military, intelligence and police—exercise effective control over the entire country.



- 2.34 On 31 August 2011, the Government ended a state of emergency which had been in place almost constantly since 1971. Under the Emergency Regulations, security forces had broad powers of arrest and detention, including the ability to hold suspects for up to a year without charge. Several elements of the emergency regulations remain in force under the *Prevention of Terrorism Act 1979* (PTA).
- 2.35 Some Tamil militant groups, such as the Eelam People's Democratic Party (EPDP) and Tamil Makkal Viduthalai Pulikal (TMVP), switched their allegiance to the then Government during the conflict and played a key role supporting it in the north and east. While these groups have reportedly renounced paramilitary activities, DFAT is aware of reports that they continue to be active in Sri Lanka, including in criminal activity. While credible, these reports are difficult to verify.
- 2.36 Crime rates across Sri Lanka vary, but are highest in Colombo District and tend to be higher in the Western Province and the Northern Province. The incidence of homicide throughout has fallen sharply in recent years and is now comparable with other South Asian countries, but the rates of many other serious crimes, including assault and rape have either remained steady or increased slightly.

## Security situation in the north and east

- 2.37 The security situation in the north and east has greatly improved since the end of the military conflict. With the cessation of fighting, the humanitarian situation in these areas has also improved. The end of the conflict has allowed reconstruction to occur, including the repair of the main highway, railway and ports linking northern Sri Lanka to the rest of the country. In turn, this has helped to reduce the cost of transport and of basic goods in northern Sri Lanka.
- 2.38 Military and security forces maintain a significant presence in the Northern Province, including Mannar, Vavuniya, Kilinochchi, Mullaitivu and Jaffna Districts. According to the Government of Sri Lanka, the number of personnel has been reduced by approximately 30 per cent since the end of the conflict but there may be up to 70,000 Sri Lankan Defence Force troops and up to 15,000 civilian police still stationed in the north.
- 2.39 Within days of assuming office, the new government led by President Sirisena appointed two retired senior civil servants as Governors in the Northern and Eastern provinces, with a view to initiating measures to strengthen civilian administration. These posts were previously held by retired military personnel. The Government has also commenced discussions on progressively reducing High Security Zones in the Northern Province and has decided to release land to the public. Restrictions placed on persons visiting the North that were introduced in October 2014 have been lifted.
- 2.40 Under the Rajapaksa government one of the main roles of the security forces in the north and east, including intelligence operatives, included monitoring of any possible LTTE activity, any form of civil resistance and anti-Government sentiment. Community members were questioned after they were visited by Non-Government Organisations (NGOs) or foreign government officials. Although not officially mandated to do so, in many areas military officers and personnel took a visible and active role in aspects of civilian life. This included participating in community functions, openings of development projects such as schools and houses and undertaking community work. The Sirisena government has publicly claimed that military involvement in civilian activities had ceased, but as of 13 February 2015, it is too early to make an assessment of the accuracy of this claim.

## Human Rights Framework

- 2.41 Sri Lanka is a party to all major international human rights conventions. Many international human rights are guaranteed in Sri Lanka's Constitution under Chapter 3 on 'Fundamental rights'.
- 2.42 The national human rights body, the Human Rights Commission of Sri Lanka (HRCSL), is charged with protecting and promoting human rights in law, policy and practice. Citizens are able to petition the HRCSL about breaches of their fundamental rights. The HRCSL maintains comprehensive inquiry and investigation processes and publishes annual reports on the number of complaints received and resolved, including for example, complaints about torture, disappearances, extra-judicial killings, deaths in custody and arrest and detention. These processes apply only to matters involving executive or administrative action.

- 2.43 In October 2007, the International Coordinating Committee of National Human Rights Institutions Sub-Committee on Accreditation changed the HRCSL's accreditation from Status A (compliance with the *Principles Relating to the Status of National Institutions* (the Paris Principles) to Status B (observer status—not fully in compliance with the Paris Principles or insufficient information provided to make a determination). At the time, the Sub-Committee on Accreditation noted that the appointment of the Governing Body in 2006 was done without the recommendation of the Constitutional Council prescribed in the Constitution, measures to ensure the independent character and political objectivity of the Governing Body were not taken and the HRCSL had failed to issue annual reports on human rights as required by the Paris Principles.
- 2.44 As of February 2015, the new Sri Lankan Government had committed to re-introducing provisions of the 17th amendment to the Sri Lankan Constitution, with a focus on establishing and strengthening independent bodies, including in relation to the HRCSL.

# 3. Refugee Convention Claims

## Race/Nationality

### Ethnicity

- 3.1 The Sri Lankan Constitution provides that ‘no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds’.
- 3.2 However, ethnicity is highly politicised in Sri Lanka and tends to be bound together with issues of language and religion. These three issues are defining features of day-to-day life in Sri Lanka. Most Sri Lankans tend to live alongside members of their own ethnic groups. However, major urban areas are more integrated, where ethnic groups live in close proximity to each other. Colombo is highly integrated—with roughly equal populations of Sinhalese, Tamils and Muslims. This high level of integration is due in part to internal relocation by Tamils and Muslims from other parts of the country during the conflict but also to the economic opportunities available in Colombo. Because the north and east were isolated from the rest of the country for almost 30 years as a result of the conflict, these areas tend to be less well integrated. Relatively few Sinhalese or Muslims who left these areas during the conflict have returned.
- 3.3 In 1956, the ‘Sinhala Only’ *Official Language Act* was introduced, making Sinhala Sri Lanka’s only official language. The 13th Amendment to the Constitution in 1987 subsequently recognised Tamil as the second official language. Under the Government’s ‘Trilingual Policy’, introduced in 2012, all people have the right to communicate in Sinhala, Tamil or English in all parts of Sri Lanka. The Ministry of National Languages and Social Integration is responsible for implementation of the Trilingual Policy and all civil servants employed after 1 July 2007 must obtain proficiency in the other national language—either Sinhala or Tamil—within five years of employment, or they will not receive annual salary increments.
- 3.4 In November 2012, the Ministry of National Languages and Social Integration established a phone hotline for the public to report violations of the Trilingual Policy. According to the Official Languages Commission (OLC), common complaints have been about notice boards, letterheads, medicine prescriptions, bus name-boards and some Government circulars not being written in the three languages. The OLC has also received complaints about the lack of Tamil-speaking police officers, though these are decreasing, probably due to Tamil-language training programs provided to police officers.
- 3.5 Overall, DFAT assesses that there are currently no official laws or policies that discriminate on the basis of ethnicity or language (‘official discrimination’) including in relation to access to education, employment or access to housing. DFAT further assesses that there is only a low-level of discrimination in the implementation of laws and policies. More generally, there is a moderate level of discrimination between particularly ethnic groups (‘societal discrimination’), largely as a result of the civil conflict and its causes.

### Tamils

- 3.6 The combined Sri Lankan and Indian Tamil population in Sri Lanka has grown from 2.7 million in 1981 to 3.1 million in 2012, but both populations have fallen as a percentage of the total population, due in part to large-scale emigration as a result of the conflict. The majority of Tamils are Hindu, although some are Christian. Tamils live throughout Sri Lanka, but all of the north and much of the east of Sri Lanka are Tamil-majority regions.

- 3.7 There are a number of Tamil parties, the largest of which operate under the umbrella of the Tamil National Alliance (TNA), which currently has 14 elected members of parliament. The TNA also won a majority of seats in the Northern Provincial Council. The TNA is part of the new Government's National Executive Council and is working with President Sirisena to take forward his 100-day agenda.
- 3.8 Since independence in 1948, Sri Lanka has experienced tensions between the majority Sinhalese and the minority Tamil populations. Sinhalese have traditionally perceived that Tamils received preferential treatment under British rule. The growing dominance of Sinhala nationalist politics contributed to the implementation of a series of policy changes during the 1970s designed to assist Sinhalese, particularly in the areas of education and employment. This meant that many Tamils faced barriers to education and employment, creating a sense of discrimination among the Tamil community that was a primary driver of the conflict. Partly as a result of the conflict, successive Sri Lankan governments have made some efforts to address these ethnic and linguistic tensions through constitutional, legal and policy changes.
- 3.9 In practice, Tamil speakers who speak no other language can face difficulties, including in the Tamil-majority Northern Province. For example, Tamils can sometimes have difficulty communicating with the police, military and other Government authorities. DFAT assesses that these practical difficulties are not due to official discrimination as such, but are the result of a lack of qualified language teachers, the disruption to civilian life caused by the conflict and the legacy of previous discriminatory language policies.

### Monitoring, harassment, arrest and detention

- 3.10 Many Tamils, particularly in the north and east, expressed a fear of monitoring, harassment, arrest and detention by security forces under the Rajapaksa government. For example, during the civil conflict, more Tamils were detained under emergency regulations and the PTA than any other ethnic group. This was largely due to LTTE members and supporters almost all being Tamil. However, there were also likely instances of discrimination in the application of these laws with LTTE support at times imputed on the basis of ethnicity (see also October 2014 Thematic Report on People with Links to the Liberation Tigers of Tamil Eelam). There are no published statistics on the numbers or ethnicity of those arrested under the PTA. However, DFAT assesses that there are currently fewer individuals detained under the PTA than there were during the conflict. The new Sirisena government has reportedly asked for a list of all detainees held under the PTA for review, and has said it is willing to work with the International Committee of the Red Cross in providing greater access to detainees and establishing a comprehensive database on detainees.
- 3.11 A number of those intending to leave Sri Lanka and travel to Australia by irregular means surveyed by the Australian National University's Development Policy Centre, cited persecution and torture as reasons for leaving. This included 37 per cent who said they wanted to leave Sri Lanka because of 'persecution in Sri Lanka' and 36 per cent who cited 'torture in Sri Lanka'. DFAT assesses that these fears are significant 'push factors' for external migration.
- 3.12 However, the cessation of the forced registration of Tamils suggests the trend of monitoring and harassment of Tamils in day-to-day life has generally eased since the end of the conflict. According to the United Nations' High Commissioner for Refugees' (UNHCR) eligibility guidelines released in July 2010, due to the improved human rights and security situation there was 'no longer a need for group based protection mechanisms or for the presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country'.

### Religion

- 3.13 The Sri Lankan Constitution guarantees freedom of religion and belief while giving Buddhism a 'foremost place'. Attacking places of worship or religious objects is punishable with a fine and/or a maximum of two years imprisonment. Acts intending to insult religion are punishable by a fine and/or a maximum of one year imprisonment.
- 3.14 There is a place for religions other than Buddhism in public life. Prominent Buddhist, Hindu, Muslim and Christian leaders are invited to all national functions, although only Buddhist rituals are performed at most events. Government dignitaries host and attend important events for different religions and Sri Lanka recognises religious holidays for all four religions. In the current government, there are four Ministers each with portfolio responsibilities for the four major religions.

- 3.15 School students are able to study their choice of Buddhist, Hindu, Muslim and Christian religions in most public and private schools, depending on the availability of teachers. There are also public schools for Hindu and Muslim students.
- 3.16 DFAT assesses there is little official discrimination on the basis of religion. There are no official laws or policies that discriminate on the basis of religion.
- 3.17 Religious tension rose after mid-2012, although the new Sirisena government has publicly said it is committed to ethnic and religious reconciliation. In a 2013 report, the Centre of Policy Alternatives (CPA) listed 65 cases of attacks on places of worship throughout the country between May 2009 and January 2013. The majority of cases reported by CPA were against evangelical Christian churches. The majority of incidents, where perpetrators were identified, were instances of Sinhala Buddhist attacks on other religious places of worship.
- 3.18 According to the SLMC, the largest Muslim political party in Sri Lanka, there were at least 241 anti-Muslim attacks and 69 anti-Christian attacks during 2013, some of which involved physical violence or the destruction of property. While charges have been laid in some cases and other cases have been settled between the parties, many attacks were not investigated. In April 2014, the former Government established a special police unit to investigate 'complaints relating to religious matters'. In the latter part of 2014, there was a drop in reported anti-Muslim attacks.
- 3.19 DFAT assesses that most members of religious groups in Sri Lanka are able to practise their faith unmolested. However, the risk of harassment or violence increases where practitioners attempt to proselytise or to carry out 'unethical conversions' which generally involves a financial inducement to convert religion.

## Muslims

- 3.20 The Muslim community is the fastest growing in Sri Lanka. Between 1981 and 2012, Sri Lanka's Muslim population grew 75 per cent, from 1.12 million to 1.97 million. The majority of Muslims in Sri Lanka are Sunni, with a very small Shia minority, including members of the Bohra community. Most speak Tamil as their first language. Muslim communities are found throughout Sri Lanka, but larger communities exist in the east, in Ampara, Batticaloa and Trincomalee and the west, in Mannar and Puttalam.
- 3.21 The SLMC is the largest Muslim party in Sri Lanka, with eight members of parliament and is a member of the Sirisena coalition government. Leader of the SLMC, Rauff Hakeem, serves as Minister of Urban Development, Water Supply and Drainage in the Government's cabinet. Another Muslim party with elected members of parliament is the All Ceylon Muslim Congress, also a member of the Sirisena government.
- 3.22 Although most Muslims sided with the Sinhalese Government forces during the civil conflict, there has been a recent rise in religious tensions between Muslims and the Sinhala-speaking Buddhist majority, including with nationalist groups such as Sihala Ravaya (Sinhalese Roar) and Bodu Bala Sena (Buddhist Power Force).
- 3.23 For example, in early 2013, Sinhalese Buddhist nationalist groups called for the removal of Halal certification of food produced in Sri Lanka, which they objected to on religious and economic grounds. The apex religious body of Muslims in Sri Lanka, the All Ceylon Jamiyyathul Ulama (ACJU) agreed in March 2013 to stop issuing Halal certification, other than for products produced for export to Islamic countries.
- 3.24 There have been a number of incidents of verbal and physical attacks on Muslims and Muslim businesses. For example, in March 2013, a Buddhist mob attacked the warehouse of a Muslim-owned business at Pepiliyana near Colombo. The alleged perpetrators were released without charge. In August 2013, Buddhist monks attacked a new mosque at Grandpass in Colombo, resulting in several injuries. The attack came as a result of the establishment of the new mosque to replace an older mosque nearby which had been scheduled for demolition for development purposes. The issue was resolved with an agreement to remove the new mosque and rescind the decision to demolish the old mosque, which would instead be expanded.
- 3.25 Violent civil unrest between Buddhists and Muslims in several towns in the Kalutara District in Sri Lanka's Western Province in June 2014 resulted in four deaths and more than 80 injuries. Three of those killed were Muslims, the fourth was a Tamil security guard at a Muslim-owned farm.

Following the riots, police imposed a two-day curfew and acted to prevent further protests in the area.

- 3.26 DFAT assesses that, like other religious groups, Muslims in Sri Lanka are not subject to official discrimination and are generally able to practise their faith unmolested. Muslims in Sri Lanka are able to exercise their political will to elect representatives of Muslim parties. However, Muslims face a moderate level of societal discrimination, as evidenced by the 2013 campaign against Halal certification in Sri Lanka.
- 3.27 Although many Muslims are employed in agriculture and fisheries, many are also employed in business, industry and in the civil service. DFAT has no evidence to indicate that Muslims are economically disadvantaged in Sri Lanka.
- 3.28 The recent rise in attacks had reversed by late 2014 and DFAT's current assessment is that, given the size of the Muslim population in Sri Lanka and the relatively low number of incidents of violence, there is a low risk of political or religious violence for Muslims in Sri Lanka.

### Political Opinion (Actual or Imputed)

- 3.29 Democratic elections have been held on a regular basis since independence in 1948. Elections have not been marred by large-scale violence or rigging but cannot always be described as entirely free and fair. Despite fears to the contrary, the conduct of the Presidential election on 8 January was peaceful and orderly, and witnessed a historically high voter turnout of 81.5 per cent. In its interim report on the Presidential election, the Commonwealth's Observer Mission stated that although the result reflected the will of the people, "the inadequate electoral and legal framework coupled with an unequal pre-electoral environment means that this electoral contest did not comply with all the key benchmarks for democratic elections".
- 3.30 Provincial Council elections were held in September 2013 in Sri Lanka's Northern Province, North-western Province and Central Province. The Northern Province had been centrally controlled since the end of the civil conflict, and the election was won by the Tamil National Alliance (TNA). Based on a relatively high voter turn-out of 68 per cent, the TNA won 78 per cent of the vote and 30 out of 38 seats. The Commonwealth's Observer Mission reported that in its overall assessment, voters were able to express their will but the 'elections did not fully meet key benchmarks for democratic election.' This includes, for example, reports of the military supporting UPFA candidates and some incidents of violence in the pre-election period.
- 3.31 In March 2014, provincial council elections were held in the Western Province and Southern Province. The UPFA maintained a clear majority in both provincial councils. Although more than 1,000 election law violations were reported across both provinces, according to independent Sri Lankan observers, the elections were conducted in a relatively free and fair manner. The Uva Provincial Council elections were held in September 2014 in a relatively similar atmosphere.

### Political representation of minorities, including ethnic and religious minorities

- 3.32 Sri Lanka has no constitutional, legal or other restrictions barring minorities from participating in politics on the same basis as any other citizen. Sri Lanka has a diverse political landscape, with 64 registered political parties. Individual parties represent Sinhala and Tamil nationalists, Buddhist, Muslim, as well as secular, left-wing and liberal interests. Since 1989, no party has been able to claim a majority in Parliament in its own right. Parties therefore tend to group into broad coalitions in which ethnic and religious minority parties often hold the balance of power.
- 3.33 Political representation in Parliament is broadly proportional to the overall population—there are 27 Tamils and 18 Muslims out of a total of 225 members. President Sirisena presides over a diverse coalition, consisting of more than a dozen political parties including Muslim, Tamil and Buddhist parties. There are two Tamil and four Muslim Ministers in the current Cabinet. Two Tamils and one Muslim serve as State Ministers and one Tamil and two Muslims serve as Deputy Ministers in the current Government.
- 3.34 There are currently no banned political parties in Sri Lanka. Political parties are generally free to operate, subject to legal restrictions. This applies both to high-profile elected representatives and office holders and low-profile party members, supporters and volunteers, including people putting up

fliers or handing out leaflets. There is no evidence to suggest this differs between representatives of Sinhalese, Tamil, Muslim or other parties.

- 3.35 However, a number of organisations remain banned in Sri Lanka. The LTTE was first designated as a proscribed organisation in Sri Lanka in 1998. The proscription was lifted in 2002, but re-imposed since 2009. These organisations and individuals may be subject to legal constraints on their activities in Sri Lanka (see also the October 2014 Thematic Report on People with Links to the Liberation Tigers of Tamil Eelam).
- 3.36 In addition, under the *Prevention of Terrorism Act* (PTA), certain actions by political parties or groups can be restricted. According to the PTA, any person who “causes or intends to cause commission of acts of violence or religious, racial or communal disharmony...” can be sentenced to a maximum of five years imprisonment.
- 3.37 Other than the proscription of banned organisations as outlined above, DFAT assesses that there are no official laws and policies that discriminate on the basis of political opinion nor is there systemic political discrimination against any particular group.

### Attacks or restrictions on Government opponents, critics and civil society activists

- 3.38 Article 14(1) of Sri Lanka’s Constitution guarantees freedom of speech and expression, freedom of peaceful assembly and freedom of association. However, DFAT assesses that tolerance for political dissent in Sri Lanka can be limited. Under the previous Rajapaksa government, active anti-Government critics were often described as ‘LTTE or terrorist sympathisers’ who ‘want to destroy Sri Lanka’ and risked attracting adverse attention by Government authorities, their agents or supporters. This included monitoring, harassment, arrest and detention. However, the Sirisena government has publicly committed to lifting surveillance of NGO workers and journalists and allowing freedom of speech. Activists and journalists have confirmed government pressure has lifted.
- 3.39 Although there are no widespread or systematic restrictions against opposition political parties, there were a number of examples of harassment of high-profile political figures under the Rajapaksa government. For example, former Chief of Defence Force General Sarath Fonseka was taken into custody and charged with ‘military offences’ soon after the 2010 Presidential elections in which he was the leading opposition candidate. He was sentenced to three years imprisonment and released in May 2012 after serving 20 months. Fonseka joined the Sirisena coalition and has had his civil rights and military honours restored under the new government.
- 3.40 Parties engaging in political activities in the north, particularly the TNA, were subject to harassment and monitoring under the previous government. For example, the Commonwealth Observer Mission reported a number of incidents of election violence against TNA candidates prior to the provincial council elections in September 2013, including an attack on the house of candidate Ananthi Sasitharan which injured eight people.
- 3.41 Violent confrontations between members of the same party or their coalition allies have also been reported. For example, five people were reportedly shot and wounded at a rally between supporters and opponents of then opposition leader Ranil Wickremesinghe (now Prime Minister) in Matara in the Southern Province on October 2013. In a separate incident in 2011, then Government Member of Parliament Duminda Silva was involved in a shoot-out with then Presidential Advisor Bharatha Lakshman Premachandra which resulted in the latter’s death.
- 3.42 Protests occur frequently in Colombo and elsewhere, organised by a broad range of groups, including opposition political parties, NGOs, students and ordinary citizens. Lawful protests are generally permitted, but the Rajapaksa government generally prevented protests about sensitive political issues such as the commemoration of LTTE fighters who died in the civil conflict. This is yet to be tested under the Sirisena government.
- 3.43 Police sometimes intervene to disperse protests if they judge the situation is becoming hostile. For example, in March 2014, police used water cannon and tear gas to disperse a protest organised by the Inter-University Student Federation about proposed cuts to higher education funding. Other protests have been suppressed with greater force. In August 2013, the army killed three persons and injured a number of others protesting against pollution of the water supply in Weliveriya outside of Colombo.

## Non-Government Organisations (NGOs)

- 3.44 There are a broad range of Non-Government Organisations (NGOs) and civil society groups active in Sri Lanka. Under the previous Rajapaksa government, NGOs were required to register with the National Secretariat for NGOs, which has operated under the Ministry of Defence and Urban Development since 2010. In February 2015, under the new Sri Lankan Government the NGO Secretariat was shifted from the purview of the Ministry of Defence and placed under the Minister of Policy Planning, Economic Affairs, Child, Youth and Cultural Affairs (who is also the Prime Minister)
- 3.45 DFAT assesses that, under the previous Rajapaksa-led government, NGOs and their staff, especially those working on human rights issues, faced challenges while executing their duties. Sri Lanka's state-run media regularly accused NGOs and civil society activists of being traitors, LTTE sympathisers or supporters or being backed by 'foreign' or 'western' powers. NGO and civil society workers often reported threats (including death threats) and intimidation. NGO workers often reported being detained and questioned by the authorities, having their offices searched and equipment and documents seized. International NGO staff sometimes faced difficulties obtaining or renewing work visas. NGOs, particularly in the north, sometimes reported difficulties implementing projects relating to sensitive subjects, such as psychosocial counselling, governance issues and legal aid. NGOs and their staff have reported that this environment has changed under the Sirisena government, although it is too early to assess whether the positive changes will be permanent.
- 3.46 In recent years there have been a small number of reports that NGO workers in the north have been abducted or detained and subsequently released. For example, on 16 March 2014, human rights activists Ruki Fernando and Catholic priest Father Praveen were arrested under the PTA. Both were released soon after their arrest.

## Groups of Interest

### Media

- 3.47 Article 14(1)(a) of Sri Lanka's Constitution guarantees 'freedom of speech and expression, including publication.' Sri Lanka ranked 165th of 179 countries on the Reporters Without Borders Press Freedom Index 2014. Although the level of formal censorship of national security and defence issues has been relaxed in recent years, DFAT assesses that most Sri Lankan journalists and editors practiced some form of self-censorship due to fears of reprisal. Of the large number of Sri Lankan journalists who live in exile abroad, few have returned to Sri Lanka.
- 3.48 The new government led by President Sirisena has taken numerous early steps to improve media freedom - a key element of his election manifesto - including by discontinuing the previous government's practice of referring visas for clearance to the Ministry of Defence, particularly in relation to journalists reporting on the situation in the Northern Province. The government has announced that all foreign media personnel are now welcome to visit Sri Lanka and travel to and report from any part of the country, freely, without fear of intimidation. In addition, websites that were blocked were unblocked and an open invitation was extended to all media personnel living in exile to return to the country. The government has also publicly stated that journalists are free to be as critical of the government as they wish.
- 3.49 State-owned media consists of two television stations, a radio station (with eight channels) and a large newspaper group (publishing newspapers in Sinhala, Tamil and English). There are also many privately owned and operated television and radio stations, newspapers, magazines and websites which broadcast and publish in Sinhala, Tamil and English.
- 3.50 A draft Code of Ethics for the Media was released in May 2013 by the Ministry of Mass Media and Information, but was withdrawn after considerable media and civil society criticism that it would prevent Sri Lankan media from publishing material critical of the Government. The Press Complaints Commission of Sri Lanka has a code of practice endorsed by the International Federation of Journalists.
- 3.51 DFAT assesses that incidents of violence against journalists have dropped in frequency in recent years, and the situation looks set to improve considerably under the new government led by President Sirisena. According to the Committee to Protect Journalists, there have been no journalists killed in Sri Lanka since the end of the conflict in 2009. However, one media worker—cartoonist



Prageeth Ekneligoda—disappeared in 2010. There have not been any conclusive investigations into past killings or abductions of journalists.

- 3.52 DFAT is aware of a number of attacks against particular media outlets in recent years, including police raids against the offices of media organisations, attacks against individual journalists and editors and arson and other attacks against media organisations. For example, the offices of Jaffna-based Tamil newspaper *Uthayan* were reportedly set alight by attackers in April 2013.

## Women

- 3.53 Article 12(2) of Sri Lanka's Constitution guarantees that no citizen shall be discriminated against on the grounds of sex. Sri Lanka is a party to the Convention on the Elimination of All Forms of Discrimination Against Women. Although women are considered equal under civil and criminal law, in matters relating to divorce, custody of children and inheritance, the law favours males.
- 3.54 There have been several high-profile women in Sri Lanka's political history, including three-time Prime Minister Sirimavo Bandaranaike and her daughter, former President Chandrika Bandaranaike Kumaratunga. More generally though, women's participation in politics is very low, even compared with other South Asian countries. Of the 225 members of Sri Lanka's current Parliament elected in 2010, fewer than six per cent are women. While there were no female ministers under the previous government, the current government has two female ministers, one state minister and two deputy ministers. Women have also featured in other important positions, such as former Chief Justice Shirani Bandaranayake.
- 3.55 Rape and domestic violence are criminalised under the *Prevention of Domestic Violence Act No. 34* of 2005. Marital rape is an offence only in cases where the individuals are legally separated. Sexual harassment is punishable under Section 345 of the *Penal Code (Amendment) Act No. 22* of 1995 and can carry a maximum five-year prison sentence. Incidents of sexual assault and rape have increased in recent years, and tend to be higher in remote areas. A majority of cases are likely to go unreported due to associated social stigma. Domestic violence is also reported to be high, but is also likely to be underreported. The Asian Human Rights Commission has said that most cases reported to authorities result in 'settlements' which do not proceed to prosecution, although sentences are sometimes given in serious cases. President Sirisena's election manifesto also focused on taking action to prevent the abuse of women (and children), including speeding up the trial process for these offences. It is too early to assess how effectively this will be implemented.

## Conditions for women in the north and east

- 3.56 There are approximately 89,000 female-headed households in the north and east, many of whom were widowed during the conflict. Women in these situations face many challenges, including a lack of physical security for their family, a lack of permanent housing and economic opportunities and difficulties accessing health services.
- 3.57 There have been a number of allegations of sexual assaults and rape attributed to the Sri Lankan military in the north and east. While the military has been blamed for taking advantage of economically vulnerable women, credible NGOs report that some women, particularly war-widows, may also have been forced into prostitution as an economic necessity.

## Sexual Orientation and Gender Identity

- 3.58 Same-sex sexual activity is a criminal offence in Sri Lanka. Persons can be given sentences of up to 10 years imprisonment for 'carnal intercourse against the order of nature' or for acts of 'gross indecency'. While there have been arrests, there have been no convictions since independence in 1948, and DFAT assesses that the private practice of homosexuality itself is generally tolerated.
- 3.59 NGOs working in this sector report regular harassment of lesbian, gay, bisexual, trans or intersex (LGBTI) individuals, especially in rural areas outside Colombo. Such incidents generally go unreported to Sri Lankan authorities. There are few support mechanisms for LGBTI individuals in the community except through a small number of NGOs working in this area. There are a number of high-profile LGBTI individuals, particularly in Colombo. LGBTI 'Pride' events take place annually in the capital without sparking protests or reaction by the authorities.

## 4. Complementary Protection Claims

### Arbitrary Deprivation of Life

4.1 Incidents of extra-judicial killing, disappearances and kidnappings for ransom occurred frequently in Sri Lanka during the civil conflict, particularly in the north and east. These were attributed to Sri Lankan security forces, the LTTE and paramilitary groups, although some victims were also killed or abducted in relation to business or personal disputes. DFAT assesses that the number of incidents of extra-judicial killing, disappearances and kidnappings for ransom has fallen considerably since the end of the conflict.

### Extra-judicial killings

4.2 There were two reports of extra-judicial killings made to the Human Rights Commission of Sri Lanka (HRCSL) in 2012, down from 21 in 2008. These do not appear to be targeted against any particular groups and may be the result of a criminal, rather than political motivation.

4.3 In some cases, perpetrators of extra-judicial killings have been charged and convicted. For example, former Deputy Inspector-General of Police Vass Gunawardena was remanded in custody in June 2013 for his alleged involvement in the murder of businessman Mohamad Shiyam in May 2013. Gunawardena was also suspected to be involved in the execution killing of five people and others while he was stationed in the Kahawatte district of Sri Lanka's Sabaragamuwa Province. He has been held on remand pending the establishment of a special trial by Sri Lanka's High Court.

### Enforced or involuntary disappearances

4.4 According to the International Committee of the Red Cross' (ICRC) 2014 Annual Report, over 16,000 Sri Lankans remained missing or unaccounted for since 1990. The great majority of these cases occurred during the 30-year civil conflict.

4.5 As of 2012, the UN Working Group on Enforced or Involuntary Disappearances had received 5,676 cases of involuntary disappearances which remain outstanding in Sri Lanka. 6,535 cases have been clarified on the basis of information provided by the Government. According to the Working Group, cases are clarified when the fate or whereabouts of a disappeared person is clearly established, irrespective of whether the person is alive or dead.

4.6 A number of disappearances of children were also attributed to the LTTE's recruitment of child soldiers during the conflict. As of March 2014, 794 tracing applications had been recorded with a Family Tracing and Reunification Unit established in the Northern Province. A small number of children have been subsequently reunited with their families.

4.7 There also have been credible reports of enforced or involuntary disappearances since the end of the conflict. A total of 126 complaints of disappearances were lodged with the HRCSL in 2012, down from a total of 1,030 in 2008, although some of these complaints have since been resolved.

4.8 There have been some recent disappearances of political activists. For example, political activists Lalith Kumar Weeraraj and Kugan Muruganandan of the Marxist-Leninist Janatha Vimukthi Peramuna (JVP) disappeared in Jaffna in December 2011 and have not been seen since. Tamil businessman Ramasamy Prabhakaran disappeared in February 2012, two days before a fundamental rights case challenging his detention and abuse during the conflict that he had filed against senior police officers was due to be heard by the Supreme Court. He has not been seen since.

- 4.9 In August 2013, then President Rajapaksa created a 'Commission to Investigate Complaints About Missing Persons' (the Commission on Disappearances) as a result of the conflict. As of February 2015, more than 20,000 complaints have been made to the Commission. The new government led by President Sirisena has extended its mandate to 15 August 2015.
- 4.10 There have also been incidents of kidnapping for ransom as well as incidents of kidnapping that appear to be politically motivated. No particular group has been the target of these attacks and they do not appear to be ethnically-based.

## Deaths in custody

- 4.11 Although there are no reliable figures available, some criminal suspects have died while in custody. In some instances, police argued the deaths were in self-defence. Deaths in custody are generally unrelated and isolated in nature. Disciplinary and legal actions related to such incidents have been recorded.
- 4.12 In addition to deaths in custody, there have been a number of incidents of prison riots (unrelated incidents in different prisons), resulting in several deaths. For example, following a search of the Welikada Prison in Colombo in November 2012, a riot resulted in the deaths of 27 prisoners.

## Death penalty

- 4.13 Sri Lanka maintains the death penalty for murder and drug trafficking, although it has not carried out any executions since 1976. In 2012, media coverage of serious sexual assaults and murders sparked public calls to implement the death penalty. However, domestic debate on the reactivation of the death penalty was dampened after the execution of Sri Lankan maid Rizana Nafeek in Saudi Arabia in January 2013. New Justice Minister Wijedasa Rajapaksha reportedly told senior Buddhist monks in February 2015 that the death penalty would be implemented if the crime rate continued to rise. This is at odds with Prime Minister Wickremesinghe's earlier public statement in January 2015 that Sri Lanka would ratify the second optional protocol (on abolition of the death penalty) to the International Covenant on Civil and Political Rights.
- 4.14 The method of execution in Sri Lanka is hanging. Under the *Criminal Procedure Code*, all death penalty sentences have to be appealed and the court will appoint a legal aid lawyer to defend the accused. Presidential ratification is required for a death penalty to be implemented.
- 4.15 Although Sri Lankan courts have handed down the death penalty for offences committed since 2004, presidential ratification has not been issued. According to Sri Lanka's Department of Prisons, 1199 persons were sentenced to death during 2001-2011.

## Torture

- 4.16 Article 11 of the Sri Lankan Constitution, and other laws, prohibit torture. Sri Lanka has ratified the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Torture is an offence punishable by imprisonment of between seven years and 10 years.
- 4.17 In practice, DFAT assesses that there have been credible reports of torture carried out by Sri Lankan security forces, in some cases resulting in death. Reports of torture come from a wide range of actors, including political activists, suspects held on criminal charges and civilians detained in all parts of Sri Lanka, including in relation to suspected LTTE connections. Incidents of torture are not confined to any particular ethnic, religious or political group.
- 4.18 Torture may be used to extract information or confessions from suspects. Although evidence obtained by torture is generally inadmissible in courts in Sri Lanka, for those suspects held under the PTA, all confessions obtained at or above the rank of Assistant Superintendent of Police are admissible in court.
- 4.19 Victims of torture can complain to the HRCSL or directly to the Supreme Court about violation of their fundamental rights. There were a total of 535 complaints of torture reported to the HRCSL in 2012. However, it is difficult to determine the prevalence of torture with any accuracy which means that few reports are proved or disproved. Disciplinary action can also be taken if such complaints are

made against the police or in prisons, but there have been few recent cases where charges have been brought against police officers for torture.

### Torture or mistreatment of returnees

4.20 DFAT is aware of a small number of allegations of torture or mistreatment raised by asylum seekers who have been returned to Sri Lanka. Verifying these allegations is complicated by the fact that many have been made anonymously, often to third parties.

4.21 However, there have been thousands of asylum seekers returned to Sri Lanka since 2009, including from Australia, the US, Canada, UK and other European countries, but relatively few allegations of torture or mistreatment (see also 'Treatment of Returnees', below). Although DFAT does not routinely monitor the situation of returnees, DFAT assesses that the risk of torture or mistreatment for the great majority of returnees is low, including those suspected of offences under the *Immigrants and Emigrants Act*. Under the previous government, DFAT assessed that the risk of torture or mistreatment for returnees was greater for those who are suspected of committing serious crimes, including people-smuggling or terrorism offences. This was due mostly to the greater exposure these returnees will have to authorities on their return which generally includes extended periods of pre-trial detention. It is too early to make an assessment as to whether this will change under the Sirisena government.

## Cruel, Inhuman or Degrading Treatment or Punishment

### Detention

4.22 With the exception of those in post-conflict rehabilitation (who are overwhelmingly ethnic Tamil), the prison population in Sri Lanka is broadly representative of the country's overall ethnic and religious composition. In general, prison conditions in Sri Lanka do not meet international standards because of a lack of resources, overcrowding and poor sanitary conditions.

4.23 Although Sri Lankan law prohibits arbitrary arrest and detention, the *Prevention of Terrorism Act* (PTA) allows authorities to detain suspects without charge for up to 72 hours. Following this, a suspect must either be produced before a magistrate or can be held without charge under detention orders for three-month periods not exceeding 18 months. Suspects can be held in irregular places of detention—not police stations, detention centres or prisons.

4.24 The HRCSL has stated that during 2010 and 2011 complaints about arrest and detention dropped significantly after the HRCSL began random visits to police stations to check whether illegal detention or abuse was taking place. Despite some restrictions, the ICRC is generally able to monitor detainees throughout Sri Lanka, including those held under the PTA. The ICRC is able to visit persons at their place of arrest including at prisons, police stations and the Terrorism Investigation Division at police headquarters. The ICRC suspended visits to people held in prisons under the responsibility of the Ministry of Rehabilitation and Prison Reforms (MRPR), including rehabilitation centres following a dispute with prison authorities in March 2010. The ICRC resumed monitoring of the centres in April 2013.

# 5. Other Considerations

## State Protection

- 5.1 Since the removal of the LTTE's military and civil administration and the end of the conflict, Sri Lankan security and police forces have exercised effective control over the entire country. This has allowed the re-establishment of the Sri Lankan judicial system in the north and east of the country.
- 5.2 DFAT assesses there is no law or Government policy which hinders access to state protection on the basis of religion or ethnicity. Any citizen can exercise avenues of redress through the police, judiciary and the Human Rights Commission of Sri Lanka. In practice, these avenues may be limited by linguistic barriers or by a lack of resources for court proceedings. In addition, it is likely that many Tamils in the north and east are still fearful of police and security officers and are therefore less likely to seek redress through the police.

## Police

- 5.3 The Sri Lankan Police Service (SLPS) has a notional strength of around 90,000 members and has responsibility for enforcing criminal and civil laws and maintaining general law and order. The SLPS maintains a 6,000 member paramilitary Special Task Force (STF). In 2012, the Government established a 2,000-member auxiliary Civil Defence Force comprised largely of former LTTE cadres.
- 5.4 With the removal of emergency regulations in 2011, the SLPS became responsible for maintaining law and order within Sri Lanka. In August 2013, the former Rajapaksa government established a Ministry of Law and Order to reassign responsibility for the SLPS from the Defence Secretary's portfolio, with the President retaining ministerial responsibility for both the Ministry of Law and Order and the Ministry of Defence and Urban Development. Under the new Sirisena government, portfolio responsibility for the SLPS has been given to the Minister of Public Order, Disaster Management and Christian Affairs. The Sirisena government has identified the independence of the police as part of its agenda for constitutional reform aimed at re-establishing the independence of key state institutions.
- 5.5 Language remains a significant barrier for effective policing, particularly in the north and east. There are reportedly 900 Tamil police officers and 1,500 Tamil-speaking Sinhalese officers deployed to the north and east, which suggests that relatively few of the approximately 15,000 officers in the north and east can speak Tamil.
- 5.6 Any member of the public can make complaints against ill-treatment by police to senior officials in the chain of police command. The SLPS maintains a separate unit to deal with disciplinary issues of its members. The public can also lodge complaints with the National Police Commission which investigates complaints against individual police officers or the police force in general.

## Judiciary

- 5.7 The Sri Lankan judicial system allows victims of harm or ill-treatment to seek protection and redress from the state. This includes through 'fundamental rights' cases lodged directly with the Supreme Court, which is Sri Lanka's final appellate court. The Supreme Court also has limited power to review the constitutionality of Acts of Parliament. Beneath the Supreme Court, the Court of Appeal hears appeals from the High Court of each province and lower courts, including Magistrates Courts for criminal cases and District Courts for civil cases.

- 5.8 Sri Lanka's courts are located across the country and Tamil-speaking judges are assigned to courts in majority Tamil-speaking areas. Consistent with Sri Lanka's Constitution, a person is presumed innocent until proven guilty and the onus of proof is on the prosecution, except for offences under the *Prevention of Terrorism Act (PTA)* where the onus is on the person to prove their innocence.
- 5.9 As a result of lengthy legal procedures, the large number of detainees and a limited number of qualified police, prosecutors and judges, there can be long delays before a suspect's case is brought to trial. Suspects are tried by jury in criminal cases but not in those brought under the PTA. All suspects have access to legal representation and the right to appeal convictions.
- 5.10 Where the law dictates, judges are able to exercise a broad degree of discretion in determining a sentence, depending on the facts of the case. For example, in addition to custodial sentences, judges can issue fines or order suspended sentences, community service, or probation. DFAT assesses that the judiciary in Sri Lanka is generally able to exercise its independence in most criminal and civil cases.
- 5.11 The Constitution was amended in 2010 to allow the President to appoint senior members of the judiciary including the Chief Justice and the President and Judges of the Court of Appeal. Former Chief Justice Shirani Bandaranayake was impeached in January 2013 following a controversial Parliamentary probe into her financial affairs, representing an erosion of the independence and impartiality of the Sri Lankan judiciary. Her replacement, Mohan Pieris, was dismissed in January 2015 after President Sirisena decreed that Bandaranayake was not removed in accordance with the constitution. Bandaranayake was reinstated but retired within 24 hours. Justice K. Sripavan, a Tamil, was appointed Chief Justice.
- 5.12 In practice, there can be a lack of effective legal protection and redress for victims of crimes in Sri Lanka. This is generally due to a lack of resources rather than ethnicity or religion—DFAT is not aware of any cases over the last few years where persons were denied access to legal remedies based on ethnicity or religion. In some cases, disputes are settled outside the legal system.

## Internal relocation

- 5.13 Article 14(1)(h) of Sri Lanka's Constitution allows any citizen 'the freedom of movement and choosing his residence within Sri Lanka' and there are no official restrictions to internal relocation in Sri Lanka. All citizens, including Sinhalese, Tamils and Muslim Sri Lankans, can relocate to any part of the country they choose.
- 5.14 At least 483,000 people have been resettled following the end of the conflict, mostly to their places of origin. Rather than remain in camps, many Internally Displaced Persons (IDPs) who left resettlement camps have been housed with host communities due to an ongoing shortage of housing damaged during the conflict. Approximately 24,000 IDPs in 34 centres have not yet been resettled, of which approximately 19,000 are located in the Jaffna district. A number of IDPs have chosen to remain in their area of displacement rather than to return their areas of origin, including the 75,000 members of the Muslim community displaced by the LTTE during the conflict to Puttalam in the west of Sri Lanka. The Sirisena government has committed to releasing land and resettling IDPs as far as possible.
- 5.15 Although relatively few of the 35,000 Sinhalese who left their homes in the north of Sri Lanka during the conflict have returned, there are large Tamil and Muslim communities in the south as a result of internal relocation during the conflict. Many Tamils have chosen to remain in Colombo rather than return to their former place of residence in the north, due to better job prospects.
- 5.16 According to the 2012 census, 18 per cent of the total population has relocated to their current district after being born in another district. The census reported the top five districts to which people had internally migrated were Colombo district (593,942), Gampaha (563,363), Kurunegala (202,826), Anuradhapura (169,421) and Puttalam (140,690).
- 5.17 In 2011, the Government agreed to stop the forced registration of residents in Jaffna and Kilinochchi by the military after a fundamental rights petition was lodged in the Supreme Court. Registration of Tamils living in the south no longer occurs.
- 5.18 In practice, anyone arriving at a new locality will need to register with the local Grama Niladhari (Village Officer) for administrative purposes such as obtaining documents to confirm place of residence for school admission, employment, election registration and access to essential services

such as water etc. In addition, when a citizen purchases land or property they must register with the local council for land/property tax purposes.

## Limitations on internal relocation

- 5.19 Internal relocation options can be limited by the absence of family connections or by a lack of financial resources. Many returnees have reported difficulties in accessing basic necessities such as shelter, food, water and sanitation and rebuilding livelihoods. The continued occupation of private lands by the military, difficulties establishing title to land ownership or uncleared land mines or unexploded ordinance can also complicate successful internal relocation, particularly in the north.
- 5.20 Because Sri Lankan security forces maintain effective control throughout Sri Lanka, it is unlikely that individuals will be able to relocate internally with any degree of anonymity. In particular, the Sri Lankan military, intelligence and police maintain a high level of awareness of returned IDPs to the north and east. For example, according to a 2013 UNHCR survey, 87 per cent of mostly Tamil IDPs who had returned to their homes in the north and east had been registered by the military and 71 per cent had been visited by the military or the police Criminal Intelligence Division (CID) for interviews. It is too early to assess whether this will change under the Sirisena government.
- 5.21 The UNHCR's December 2012 Eligibility Guidelines for Sri Lanka state that 'an internal flight or relocation alternative is not available in Sri Lanka in cases where the feared persecution emanates from the state itself or elements associated with it'. Sri Lankan authorities retain comprehensive country-wide 'stop' and 'watch' lists of those suspected of involvement in terrorist or serious criminal offences. Although individuals will generally not be able to avoid adverse attention from security forces in these more serious cases, DFAT assesses that individuals do generally have the ability to relocate internally to minimise monitoring or harassment by local-level officials for petty issues, subject to the limitations outlined in paragraph 5.19 above.

## Treatment of Returnees

- 5.22 Article 14(1)(i) of Sri Lanka's Constitution entitles any citizen to 'the freedom to return to Sri Lanka'. Entry and exit from Sri Lanka is governed by the *Immigrants and Emigrants Act* (the I&E Act). Under Section 45(1)(b) of the Act, it is an offence to depart other than via an official port of entry or exit, such as a seaport or airport. Penalties for leaving Sri Lanka illegally can include custodial sentences of up to five years and a fine of up to 200,000 Sri Lankan rupees (around AUD 1,600).
- 5.23 Returnees are generally considered to have committed an offence under the I&E Act if they depart Sri Lanka irregularly by boat. Where a returnee is travelling voluntarily on their own passport on a commercial flight they may not come to the attention of local authorities if they departed Sri Lanka legally through an official port on the same passport, because they have not committed any offence under the I&E Act.

## Exit and Entry Procedures

- 5.24 Upon arrival in Sri Lanka, involuntary returnees, including those on charter flights from Australia, are processed by the Department of Immigration and Emigration (DoIE), the State Intelligence Service (SIS) and Airport CID. Officers of the Australian Department of Immigration and Border Protection (DIBP) based in Colombo endeavour to meet all commercial flights and charter flights with involuntary returnees from Australia on arrival. DIBP has observed that processing arrivals typically takes several hours, primarily due to the manual nature of the interview process and staffing constraints at the airport. Voluntary returns eligible for an Australian Government Assisted Voluntary Return package are usually met by the International Organization for Migration. Other voluntary returnees are usually met by DIBP staff based at the Australian High Commission in Colombo.
- 5.25 During the processing of returnees, DoIE officers check travel document and identity information against the immigration database. SIS checks the returnee against intelligence databases. Airport CID verifies a person's identity to then determine whether the person has any outstanding criminal matters.
- 5.26 For returnees travelling on temporary travel documents, police undertake an investigative process to confirm the person's identity, which would address whether someone was trying to conceal their

identity due to a criminal or terrorist background, or trying to avoid, among other things, court orders or arrest warrants. This often involves interviewing the returning passenger, contacting the person's claimed home suburb or town police, contacting the person's claimed neighbours and family and checking criminal and court records. DFAT assesses that Sri Lankan returnees are treated according to these standard procedures, regardless of their ethnicity and religion—Tamil, Sinhalese and Muslim returnees are treated the same way on arrival in Sri Lanka. DFAT further assesses that detainees are not subject to mistreatment during their processing at the airport.

## Offences under the Immigrants and Emigrants Act

- 5.27 Most Sri Lankan returnees from Australia are questioned by police on return and, where an illegal departure from Sri Lanka is suspected, are charged under the I&E Act. DFAT understands that in most cases, these individuals have been arrested by the police at Colombo international airport. As part of this process, most returnees will have their fingerprints taken and be photographed. They are transported by police to the Magistrates Court in Negombo at the first available opportunity after investigations are completed, when custody and responsibility for the individual shifts to the courts or prison services. The Court makes a determination as to the next steps for each individual. Those arrested can remain in police custody at the CID Airport Office for up to 24 hours. Should a magistrate not be available before this time—for example, because of a weekend or public holiday—those charged are held at the nearby Negombo Prison.
- 5.28 DFAT was informed in March 2014 by Sri Lanka's Attorney-General's Department, which is responsible for the conduct of prosecutions, that no returnee who was just a passenger on a people smuggling venture has been given a custodial sentence for departing Sri Lanka illegally but fines have been issued to act as a deterrent towards joining boat ventures in the future. The Magistrates Court in Colombo typically levies fines of around 5,000 Sri Lankan Rupees (around AUD 40) for persons attempting to depart Sri Lanka irregularly on boats. However, in Negombo, the magistrate, who handles a large number of these cases, typically levies fines of around 50,000 Sri Lankan Rupees (around AUD 400) to act as a deterrent. In most cases, returnees have been granted bail on personal recognisance immediately by the magistrate, with the requirement for a family member to act as guarantor. Sometimes returnees then need to wait until a family member comes to court to collect them.
- 5.29 DFAT has been advised that no returnees from Australia to Sri Lanka have been charged under the PTA. While credible, DFAT cannot verify this claim.

## People smuggling offences

- 5.30 The Attorney-General's Department typically treats differently those suspected of being passengers on a people-smuggling venture and those suspected of facilitating or organising a venture. A returnee suspected of involvement in the organisation of irregular migration of people from Sri Lanka can be charged with an offence under Section 45C of the I&E Act for organising or attempting to organise for another person to leave in contravention of the I&E Act.
- 5.31 Some returnees from Australia have been charged with people smuggling offences and other criminal offences which they allegedly committed before departure. For example, in October 2012, warrants were issued for the arrest of a group of returnees in regard to robbery of a vessel used to travel to Australia, causing grievous harm to persons and to people smuggling. DFAT understands that, in several cases, returnees have been charged and convicted for people smuggling offences. As of March 2014, at least one charge has been upheld on appeal.

## Experience following return

- 5.32 Between October 2012 and November 2013, over 1,100 Sri Lankan Irregular Maritime Arrivals were returned from Australia to Sri Lanka. This is in addition to the many Sri Lankan asylum seekers who have been involuntarily returned from other countries, including the US, Canada, the UK and other European countries. The majority of these returnees are Tamil. Although the experiences of individual returnees will vary, many Tamil returnees choose to return to the north, because it is their place of origin, where they have existing family links and the relatively lower cost of living compared to Colombo and other urban areas in the south.
- 5.33 Many returnees will have incurred significant expenses to undertake their outward journey and, in some cases, will have incurred debt to do so. Many are apprehensive about finding suitable



employment opportunities on return. Those who have skills which are in high demand in the labour market will be best placed to find well-paid employment. Returnees who receive reintegration assistance on their return to Sri Lanka find it easier to resettle.

## Documentation

- 5.34 Sri Lankans use the National Identity Card (NIC) as their primary identification card, though birth certificates, driver's licences, and passports are also frequently used. Every Sri Lankan citizen is required by law to register their identity under the *Registration of Persons Act* of 1968 and is issued a NIC.
- 5.35 Sri Lankans are entitled to apply and obtain identity documents regardless of their ethnicity, religion, language or geographic location. In the north and east, people have reported delays in obtaining identity documents due to insufficient numbers of Tamil-speaking officials to service applicants. People who reside in rural communities have reported difficulties in obtaining identity documents because of the need to travel to major townships (sometimes several times) to submit applications.
- 5.36 Sri Lankans residing overseas can apply for identity documents from any Sri Lankan overseas mission. The Sri Lankan Deputy High Commission office in Chennai, Tamil Nadu, provides services for Sri Lankan refugees living in camps to obtain their identity documents and to register births.

## Passports and temporary travel documents

- 5.37 The DoIE is responsible for issuing passports in Sri Lanka and Sri Lankan diplomatic and consular missions are responsible for issuing passports to Sri Lankans overseas. Current requirements for adult passports are an existing passport (if available), an original birth certificate, original NIC, marriage certificate (to confirm change of name after marriage) and a letter, professional certificate or licence to confirm the applicants' profession. Passports are machine-readable and are typically valid for a period of 10 years.
- 5.38 Sri Lankans are able to re-enter the country on temporary travel documents (also known as an Emergency Passport or a Non-Machine Readable Passport) issued by diplomatic and consular missions if they do not have their passport. Temporary travel documents are valid only for re-entry to Sri Lanka.

## Birth certificates

- 5.39 Births at hospitals are recorded at the hospital and forwarded to the Divisional Secretariat for registration, while births taking place at home must be registered through the Grama Niladhari (Village Officer). After registration a birth certificate is issued. An individual is eligible to obtain a copy of his/her birth certificate from the divisional secretariat of the area where the certificate was issued.

## National Identity Card

- 5.40 The NIC is considered by Government and commercial sectors to be the primary identity document in Sri Lanka and every citizen is required to hold a NIC by law. All citizens over the age of 16 are eligible to apply for a NIC and there is presently no renewal period for the card. The NIC does not specify a race, ethnicity or religion and is issued in Sinhalese, or Sinhalese and Tamil in some instances (e.g. for Tamils, or for those living in the north and east). The Government is working to issue computerised bilingual identity cards for all holders.

## Marriage Certificates

- 5.41 Sri Lanka has several systems of marriage according to religious background and geographic location. The general law is applied to every citizen except for those who have personal laws governing their marriage. Marriage certificates issued to Buddhists, Hindus, Christians and Kandyans are in the same format. The marriage certificates issued to Muslims are slightly different as they contain details about the dowry given by the groom and details about the *nikah* (the Muslim

religious marriage ceremony). Under the general law, the dissolution of a marriage is adjudicated by the District Court. Muslim divorces are adjudicated by the Qazi court.

## Document Fraud

5.42 Document fraud is prevalent in Sri Lanka due in part to the lack of computerised databases to store information. Government departments continue to keep most records in hard-copy format. Applicants are able to obtain genuine identity documents by submitting forged supporting documents. Counterfeit documents are the primary cause of fraud within the NIC, passport and driver's licence issuance processes.