



PP (female headed household; expert duties) Sri Lanka [2017] UKUT 00117 (IAC)

**Upper Tribunal  
(Immigration and Asylum Chamber)**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 and 24 January 2017  
substantively  
[Listed on sundry previous dates]**

**Given orally on 24 January  
2017  
Promulgated on 06 February  
2017**

.....

**Before**

**The President, The Hon. Mr Justice McCloskey**

**Between**

**PP  
(Anonymity Direction Made)**

Appellant

**And**

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

Respondent

- (I) *A Tamil female single head of household residing in the former conflict zone of Northern and North Eastern Sri Lanka may be at risk of sexual abuse and exploitation perpetrated by members of police, military and paramilitary State agents.*
- (II) *The existence and measurement of this risk will be an intensely fact sensitive question in every case. The case-by-case assessment will be informed by the presence or absence of positive risk factors and decreasing risk factors.*

- (III) *The positive risk factors are living in isolation from others, low socio-economic status, dependence upon the distribution of Government aid or the provision of other services by the security forces and a perception of former LTTE membership, links or sympathies. These positive factors do not necessarily have to be satisfied cumulatively in every case: context will invariably be everything.*
- (IV) *The countervailing factors are higher socio-economic status, little dependence on Government aid or services and the support of male relatives or neighbours. The context of the particular case will dictate the force and weight of each of these factors, individually or cumulatively, in any given case. These too will be assessed on a case-by-case basis.*
- (V) *Experts' reports and evidence must comply fully and strictly with the Senior President of Tribunal's Practice Direction.*
- (VI) *The methodology of every expert witness should always be patent on the face of the report. If not, it should be provided via a supplement, accompanied by a full and frank explanation of the omission. Experts and practitioners are reminded of the decisions of the Upper Tribunal in MOJ and Others [2014] UKUT 00442 (IAC), at [23] - [38] and MS (Trafficking - Tribunal's powers - Article 4 ECHR) Pakistan [2016] UKUT 226 (IAC), at [68] - [69].*

## **Representation**

For the Appellant: Ms S Jegarajah, of counsel, instructed by Wimbledon Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

## **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

## **DECISION**

### **Introduction**

1. This is an appeal of unfortunately elderly vintage. Insight into this circumstance is provided by the earlier directions and rulings of the Upper Tribunal to which reference can be made if necessary. This appeal dates

from 2011 and has been the subject of a substantive decision of the First-tier Tribunal (the "*FtT*"), two decisions of the Upper Tribunal (dated 09 May 2012 and 24 September 2013 respectively) and, ultimately, a decision of the Court of Appeal whereby the Appellant's appeal was allowed and the case was remitted to the Upper Tribunal for fresh consideration. The hearing of this sadly delayed appeal was, ultimately, completed on 24 January 2017. The decision of the Upper Tribunal was announced immediately upon completion.

### **The Underlying Decision**

2. This appeal has its origins in a decision made on behalf of the Respondent, the Secretary of State for the Home Department (the "*Secretary of State*"), dated 11 August 2011, whereby the application of the Appellant, a national of Sri Lanka, then aged 24 years, for asylum was refused. This decision is susceptible to the following breakdown:
  - (a) It was accepted that the Appellant is a national of Sri Lanka.
  - (b) The Appellant's claims relating to the disappearance and possible death of her uncle, arising out of arrest by the army for allegedly providing information to the "Tamil Tigers" ("LTTE"), was disbelieved.
  - (c) Ditto her claim about the alleged forcible apprehension of her 13 year old brother by LTTE.
  - (d) An inconsistency relating to whether her brother is a surviving member of her family was noted.
  - (e) Ditto her claim of duress by LTTE members in September 2009 given certain evidence that LTTE had been defeated by May 2009.
  - (f) No weight would be attached to the document purporting to be a death certificate relating to the Appellant's father.
  - (g) The assertion that her father had been murdered by the army was disbelieved.
  - (h) Ditto her assertion, in the context of her claim of adverse interest from the security forces, that her sister had not been arrested on account of her age (8 years).
  - (i) No weight was attached to a document purportedly emanating from the Sri Lanka Human Rights Commission.
  - (j) The Appellant's answers relating to her treatment by the security forces during an episode of alleged detention were considered inconsistent and the detention claim was rejected accordingly.

- (k) Inconsistencies in the Appellant's account when juxtaposed with the content of a supposed extract from a "police information book" were also noted.
  - (l) There was an assessment of further inconsistencies in the Appellant's claim to have been detained by the security forces during a period of some weeks.
  - (m) The Appellant's account of her escape from detention circa September 2009 was disbelieved.
  - (n) Ditto her claim relating to further detention, coupled with torture and rape, in February 2011.
  - (o) The Appellant's ability to transit Colombo Airport upon leaving Sri Lanka was also noted, to her detriment.
3. In the remaining passages of the Secretary of State's decision, consideration was given to, *inter alia*, the question of risk in the event of the Appellant's return to Sri Lanka. This was assessed through the lens of the most recent country guidance decision of the IAC, namely TK (Tamils - LP updated) Sri Lanka CG [2009] UKAIT 00049. It was considered that none of the risk factors identified in this decision applied to the Appellant.

### **Subsequent Judicial Decisions**

4. The FtT made certain findings favourable to the Appellant, namely:
- (a) She had been arrested three times.
  - (b) She had been released on payment of a bribe.
  - (c) She had never been a member or supporter of LTTE.
  - (d) Her younger brother had been forced to join LTTE and nothing had been heard of him since.

The FtT further found:

*"There is no evidence that she has suffered scarring but having regard to the low standard of proof I am just prepared to accept that she was arrested three times but conclude that these were general roundups of Tamils and I do not accept that she was ever specifically targeted because of her brother's LTTE activities. I further accept that she became pregnant as a result of rape when in detention and that her pregnancy has been terminated ....*

*I am not satisfied as to her evidence regarding her father's death .....*

*Further, it is left entirely unexplained why the Appellant delayed fleeing Sri Lanka until her third application for a student visa was granted. It is entirely clear that she never had any genuine intention in studying in this country and did not do so. She therefore misled the Entry Clearance Officer."*

The FtT also gave consideration to the risk factors identified in LP (LTTE area - Tamils - Colombo - risk?) Sri Lanka CG [2007] UKAIT 00076. All of this gave rise to the following omnibus conclusion:

*"Looked at in the round I find that an appellant with this profile will not be at risk on return."*

Her appeal was dismissed accordingly.

5. On 03 November 2011 permission to appeal to the Upper Tribunal was granted on the basis that the FtT had failed to give adequate reasons for concluding that the Appellant would not be at risk upon return notwithstanding the finding of past persecution. Next, by its decision dated 09 May 2012, the Upper Tribunal diagnosed an error of law in the decision of the FtT. At a subsequent hearing it proceeded to remake said decision. This rehearing was characterised by, in particular, the intervening decision of the Upper Tribunal in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). In its decision dated 24 September 2013, the Upper Tribunal stated:

*"There is no finding that the Appellant is of continuing interest to the security forces in Sri Lanka and no finding that she is [the] subject [of] any outstanding Court orders or an arrest warrant .....*

*As it is accepted that a person who is detained will be at risk of persecution, the issue is whether an appellant is at risk of being detained by the security forces either at the airport or following a visit once they have returned to their home address ....."*

The Judge made the following specific finding:

*"The Appellant has not provided evidence to show that as a Tamil female, she would be at risk in Sri Lanka and there is no evidence to suggest that females in Sri Lanka form a risk category in addition to the risk categories identified in the case of GJ."*

Finally, the Judge reasoned that given the defeat of LTTE and the subsequent re-alignment of the political situation in Sri Lanka, coupled with the characterisation of the Appellant's detention on three occasions "on general round-ups" and the very limited conclusions to be drawn from her brother's forcible recruitment to LTTE -

*".... The evidence does not show that the Appellant falls into that category of persons who will be regarded as being a threat to the integrity of Sri Lanka as a single state .... And a person who is not regarded as a Tamil activist working to destabilise the state, is not reasonably likely to be detained."*

The omnibus conclusions that the Appellant was not at risk of persecution and did not qualify for international protection were made accordingly.

6. The Appellant's case subsequently reached the level of the Court of Appeal through the protracted route of permission to appeal having been refused by both the Upper Tribunal and a single Judge of the Court of Appeal, followed by an oral hearing when another single Judge of the Court of Appeal took a different view. All of this culminated in an order dated 11 December 2014 allowing the appeal.
7. The aforementioned order is, helpfully, accompanied by the appellate court's decision. It is this decision which provides the framework for the remittal/remaking exercise in which I am now engaged. In her judgment Arden LJ referred to the most recent country guidance decision of GJ and Others. She noted in particular the quotation from a UNHCR publication, at [11] and the Tribunal's consideration of the UNHCR list of groups in need of "*particularly careful examination*". Her Ladyship then noted certain evidence to which the appellate court had been referred (apparently new evidence), namely a passage relating to the risks concerning Tamil war widows.
8. I pause at this juncture to observe that it is far from clear that the case, including the evidence, advanced before the Court of Appeal replicated that pertaining to the tribunal proceedings. Be that as it may, the appellate court was persuaded to allow the appeal and remit the case on the basis of an interpretation of the decision of the Upper Tribunal and an assessment that more detailed reasoning and enquiry in its decision was lacking. The Court of Appeal, finally, highlighted the evidence pertaining to the risk to female heads of household arising out of the high levels of militarisation in "*Tamil areas*", which remain "*militarised*": see [35].

### **The Appellant's Case**

9. As the outline in [2]-[8] above demonstrates, the Appellant's case has evolved not inconsiderably.
10. The first component of the Appellant's case consists of the judicial findings previously made, summarised in [4] above. At this stage I turn to the task of making further material findings, based on my evaluation of all the evidence and taking into account matters which were not disputed on behalf of the Secretary of State. My further findings are:

- (a) The Appellant's mother was alive when the Appellant left Sri Lanka, but is now deceased.
- (b) The Appellant's sister continued to reside in the family home until recently.
- (c) The Appellant and her family were at all material times, economically disadvantaged, by reason of the war and remain so.
- (d) All are/were of Tamil ethnicity and Hindu religion.
- (e) The Appellant's age ranged from 17 to 22 during the period when the events giving rise to the findings in [4] above occurred.
- (f) The Appellant did not complete her education and her only employment in Sri Lanka was as a trainee clerk in the Bank of Ceylon between 2007 and 2009.
- (g) A student visa procured through an agent secured the Appellant's entry to the United Kingdom on 10 February 2011.
- (h) Following her flight from Sri Lanka, the Appellant maintained telephone contact with her mother until the latter died in April 2016.
- (i) The army continued to harass her mother, employing tactics of visits and threats, and learned of the Appellant's flight abroad. They consider the Appellant to have been a terrorist.
- (j) The Appellant maintained weekly contact with her sister until recently.
- (k) Government agents have continued to visit the family home from time to time.
- (l) Most recently the Appellant's sister has desisted from living in the family home and her whereabouts are currently unknown.
- (m) In the event of the Appellant returning to Sri Lanka, her most likely destination is the former family home, where she will reside either alone or with her sister.

### **Expert Psychiatric Evidence**

11. I turn to consider the medical evidence. In a report dated 22 April 2016, Dr Katona, Consultant Psychiatrist, diagnoses the Appellant as suffering from post-traumatic stress disorder. He attributes this to her traumatic experiences in Sri Lanka, as recounted to him. His report further describes certain "*depressive symptoms*" which he considers to be "*secondary to her PTSD*". Dr Katona considered, and rejected, the possibility that the Appellant was feigning or exaggerating her symptoms. He recommended

treatment consisting of a combination of anti-depressive medication and cognitive behavioural therapy, noting from the information available that there had been some improvement in her depressive symptoms following the initiation of medication and counselling.

12. Dr Katona also opines in relation to the scenario of the Appellant's forced return to Sri Lanka. This –

*“... would significantly worsen her already severe PTSD and associated depressive symptoms ... [which] ... would be likely to render her unable to work and support herself and to secure her basic needs (such as food and accommodation) .... She continues to have distressing suicidal thoughts. There is, in my clinical opinion, a significant risk that she would attempt suicide (potentially with fatal consequences) if she lost all hope of being allowed to remain in the UK ....*

*Because of the likely worsening of her PTSD [the appellant] would in my clinical opinion, be unable to ‘take stock’ if offered objective reassurance about her safety following her return to Sri Lanka.”*

13. Reassessing the Appellant some three months ago, Dr Katona expresses the opinion that her mental health has “*deteriorated considerably*”, having progressed to “*severe depression*”, while she continues to suffer from PTSD. She requires a protracted course of individually tailored psychotherapy. Dr Katona considers that the risk of the Appellant attempting suicide in the event of returning to Sri Lanka is now high.

### **Expert “Country” Evidence**

14. The third component in the Appellant's case is formed by two reports the authors whereof are put forward as experts. I preface my consideration of these reports with a brief outline of certain significant features of the other voluminous evidence adduced. The context within which this evidence is to be evaluated is, briefly, the following. The conflict in Sri Lanka was concentrated in the North and North East regions of the country; there the rebels, the LTTE, controlled and administered a *de facto* state (Vanni); Tamil women were involved actively as combatants; the conflict ended in May 2009, with the conclusive defeat of the rebels; the aforementioned regions have been heavily militarised subsequently, with associated repression; since the termination of the conflict, the phenomenon of the perpetration of sexual violence against Tamil women by members of the armed forces has become well recognised; and the indigenous population of the regions concerned is Tamil, while the members of the security forces are Sinhalese. I elaborate on certain aspects of this lean summation *infra*.



15. There is a report of one Eva Buzo, dated 30 November 2016, which was supplemented by live evidence received via the mechanism of video link. Ms Buzo is conducting research in three countries in the context of preparing a MA thesis. The areas embraced by her research include the northern and eastern provinces of Sri Lanka. I have considered Ms Buzo's written and oral evidence in its entirety.
16. The report of Ms Buzo focuses on a discrete category of the population of Northern and Eastern Sri Lanka, mainly female single heads of household. With specific reference to the security forces, the risk to such women is described by Ms Buzo as "*harassment, unwanted visits .... and threats of violence*". Ms Buzo bases this on "*the research participants both in 2016 and my research conducted in 2013*". In other parts of her report she uses broader terminology such as "*sexual abuse and exploitation suffered by female-headed houses at the hands of members of the Sri Lankan military forces*". Ms Buzo expresses the following opinion:

*"Should the applicant [sic] be returned to Sri Lanka, there is reason to believe that she would be at a high level of risk of sexual violence ... [and] ... there is neither the political will nor the institutional infrastructure available to protect the applicant or prosecute offenders."*

The "*risk factors*" identified as applying to the Appellant are her gender; her ethnicity; the region; the ethnicity of the soldiers; the absence of a husband or male relatives; and the security forces' knowledge of and alertness to the Appellant.

17. In her live evidence, Ms Buzo stated that her report is based upon interviews of two politicians and three NGO workers in the region concerned. She did not elaborate on the characteristics or credentials of these three persons, other than to say that their work involves the provision of support to certain types of needy women, such as victims of violence. She stated that one of the politicians has a particular interest in representing women in the region. She testified that single female heads of household are at particular risk if they have no male family or community support, live in an isolated area and are economically insecure. The latter she described as a "*key*" risk factor. Conversely, where one or more of these factors is not present, it is less likely that female heads of household will be at risk.
18. Ms Buzo, notably, did not interview any Tamil female victim of the sexual violence identified. When asked by me whether she is advancing the thesis that all single female heads of household in the regions under scrutiny are at risk of such treatment she replied that she does not have the "*quantitative data*" to enable this thesis to be advanced, describing her data as "*qualitative*". In response to a specific question, namely whether she was contending that there is a "*generalised risk*" to all members of the category concerned, she replied in the negative.

19. The further expert testimony upon which the Appellant relies is that of Dr Gowrinathan, who specialises in the subjects of gender and violence and sexual violence. The subject of her doctorate was the role of women in LTTE. Dr Gowrinathan did not prepare a report for the purpose of this appeal. She is, however, the co-author of a “White Paper” published by a New York university in August 2015, entitled “The Forever Victims? Tamil Women in Post-War Sri Lanka”.
20. The gist of this report is quickly gleaned from the “Abstract”. The authors, who conducted over 50 interviews, examined the impact of six years of militarisation on Tamil women in Northern Sri Lanka. Members of this group, the authors suggest:

*“... still face the risk of rape and harassment by the security forces present throughout the region, but their lives are even more negatively impacted by the climate of fear and by a worrying uptick [sic] in violence against women within the Tamil community. The ever present threat of violence by the military has led to women leading tightly circumscribed lives, limiting their daily activities in order to minimise their risk of sexual assault ....*

*And the measures taken by the community, by the state and by international actors to address their needs have only made the situation worse. Hasty marriage for protection, well being schemes that entail isolation and exposure to state agents and disempowering livelihood programmes have further undermined their economic and political position.”*

The report documents a decline in sexual violence perpetrated by the military against Tamil women. It advances the thesis that diminishing social and economic power has made such women more vulnerable to victimisation. The authors argue that the risk will continue for as long as the military remains deployed in the region.

21. The discrete phenomena of exploitative and transactional sexual relationships are also described. A culture of impunity or abuses of women is highlighted. Another culture, that of the protection of Tamil women by the male members of their community, is noted. The report contains just one short passage relating to female heads of households:

*“In addressing the stigma and exclusion of widows, one of the military plans most deprived by activists and beneficiaries alike, is the creation of villages meant exclusively for female-headed households.”*

There is no indication that this plan has been implemented, though the Tribunal was informed of the witnesses’ belief that one such settlement has subsequently been developed.

22. The structure of the report is noteworthy: through the medium of footnotes, the authors identify the sources of the individual substantive contents. Notably, personal interviews constitute the great majority of the footnotes. Just some five reports, or publications are mentioned:
- “War Crimes in Sri Lanka” (International Crisis Group – May 2010).
  - “Sri Lanka: Women’s Insecurities in the North and East” (same, December 2011).
  - “Sri Lanka Between Elections” (same, August 2015).
  - “Sri Lanka: Women’s Insecurities in the North and East” (Human Rights Watch, December 2011).
  - A publication (possibly two publications) of the Oakland Institute in May 2015.
23. With specific reference to the above, Dr Gowrinathan, in her evidence via live video link, expressed the belief that one of the contemplated “women only” villages has now been constructed. She further testified, with particularisation, that she had the role of lead researcher in the second of the five publications listed above and had a consultative role in the last of them. She confirmed that none of these reports addresses the specific issue of risk to Tamil female heads of household at the hands of members of the Sri Lankan security forces. Her evidence was broadly consistent with that of the other expert, Ms Buzo.

### **Expert Evidence: General**

24. It was evident from counsel’s responses to the bench and the evidence elicited by questioning that the main purpose of arranging for Ms Buzo and Dr Gowrinathan to give live evidence was to explore in greater detail the methodology employed in their respective reports, also eliciting from them a degree of emphasis in respect of certain sections of the reports. It was clear to me from the exchange of questions and answers that there was a host of material issues not addressed in the reports. Nor were they pursued in examination in chief. I canvassed several of these with the witness in questioning: the definition of the “state” groups/agents who pose a threat to certain Tamil women; the role of and threat posed by paramilitaries; the distinction between the north and the east of the country; the distinction between armed state actors and unarmed state actors; the various subcategories within the generic category of Tamil women; evolving policies of the Sri Lankan Government; the second author’s involvement in the country postdating the White Paper publication; her plans for further research in the near future; actual prosecutions for rape and kindred crimes by state actors in Sri Lanka; changing cultural attitudes to conduct of this kind; and the age ranges of most Tamil women victims.

25. This exercise quickly exposed the wholly unsatisfactory way in which expert evidence was deployed in this appeal. There was no proper report from either of the two country experts. A properly compiled expert report will always be comprehensive. Insofar as there are omissions or issues requiring clarification or elaboration, these should be addressed via the medium of a supplementary report or the *inter-partes* exchange of questions to the expert and replies thereto: this practice is well established in this forum. But it was not observed in this appeal. Furthermore, it should never be necessary for an expert in a case of this kind to explain the methodology underpinning the written evidence. This should always be patent on the face of the report. If missing, it should be provided via a supplement, accompanied by a full and frank explanation of the omission.
26. Many of the requirements of paragraph 10.9 of the Senior President of Tribunal's Practice Direction were infringed by both experts. There were also breaches of the "Statement of Truth" requirement enshrined in paragraphs 10.10 and 10.11. While I have taken note of a pre-hearing letter sent to the Tribunal by the Appellant's solicitors, containing certain information, this was wholly inadequate to rectify these significant omissions. Furthermore, the unsatisfactory presentation of the Appellant's case resulted in both the Tribunal and the Respondent's representative being taken by surprise and gave rise to the need for lengthy judicial questioning - a return to the dark days of haphazard cloak and dagger litigation. All of this was regrettable and pre-eminently avoidable.
27. While the experts must bear responsibility for some of the criticisms levelled above, their culpability for many of these serial defects may lie primarily with others. In particular, there is no indication that they were alerted to the requirements of the Senior President's Practice Direction or that they were advised of the need for compliance with the decision of this Tribunal in MOJ and Others [2014] UKUT 00442 (IAC) at [23] - [38]. This decision, figuratively, appears to have fallen on deaf ears in the present case. Moreover, this Tribunal's sister decision given subsequently in MS (Trafficking - Tribunal's Powers - Article 4 ECHR) Pakistan [2016] UKUT 226 (IAC), at [68]- [69] especially, was evidently ignored.
28. Notwithstanding the shortcomings highlighted above, I am persuaded that both witnesses possess the credentials necessary to qualify for the designation of experts.
29. There is one further report which, in tandem with the psychiatric and other expert reports outlined above, appeared at one stage to belong to the forefront of the Appellant's case. This is the report of the United Nations Committee Against Torture relating to Sri Lanka, published on 16 November 2016. The main focus of this report is ill-treatment of persons detained by state agents. It also notes the impunity of public officials perpetrating such treatment, while highlighting the role of the National Human Rights Commission in *inter alia* receiving complaints from victims and their representatives.

30. This report was floating in and out of the Appellant's case for some time. Ultimately, forgiving a breach of the Tribunal's multiple pre-hearing directions, I admitted it in evidence on the first day of hearing notwithstanding the absence of any application under Rule 15(2A). It quickly became apparent that six of the report's eight pages were missing from the version provided to the Tribunal. This was rectified only minutes before the beginning of the final day of hearing and only following proactive action on the part of the Tribunal. When the final session commenced, I observed at the hearing that the report contains no reference to Tamil female heads of household in Sri Lanka. This was acknowledged by counsel on behalf of the Appellant and, in the event, no submission based on this report was made by counsel and it was not mentioned in the skeleton argument.

### **Other Evidence**

31. In the Appellant's hearing bundles there is no shortage of bulk. I have identified above those parts of the written evidence which featured in the presentation of the Appellant's case. The Tribunal was referred to none of the remainder, in either oral submissions or written argument. Nor was the Tribunal invited at any time to read any of this substantial quantity of material. This is reflected in this judgment. One regrettable consequence of this was that the Tribunal was left to its own devices, delving speculatively into the voluminous papers in the hope of discovering and identifying anything of importance. This was yet another unsatisfactory aspect of the presentation of this appeal. Furthermore, at the end of the hearing, the Tribunal was alerted to yet another deficiency in the Appellant's bundles relating to certain UNHCR material: unsurprisingly (at this stage) this deficiency could not be rectified since the missing materials had not been brought to the hearing.

32. I have found it necessary to draw attention to the matters addressed in [24] - [31] above firstly to ensure that the true basis and scope of this decision are properly understood and in order to properly inform any future Sri Lankan case in which the issue of giving effect to, or developing, this decision may arise. Secondly, I trust that representatives will ensure that the multiple unsatisfactory aspects of the presentation of this appeal will not be repeated.

### **Conclusions**

33. I begin with the expert country evidence. The evidence of Ms Buzo suffers from four particular shortcomings. First, her report does not disclose her supposed expert credentials or qualifications. Second, there are significant breaches of the Senior President's Practice Direction and the decisions of this Tribunal noted above. These decisions rehearse extensively the duties and principles in play. No explanation of these failings of Ms Buzo's report was proffered. Third, as noted in [24] above,

this report suffers from the frailty that it was necessary to call the author as a witness in order to explain her research methodology: see also [17] - [18] above.

34. This does not, of course, mean *ipso facto* that the Tribunal should disregard the live evidence of Ms Buzo on this discrete issue. However, having regard to the way in which this particular evidence was given, which included the witness's acknowledgement (in response to a question from the Tribunal) that she had only a vague advance idea of the issues to be canvassed with her in questioning, I am obliged to treat her evidence, particularly on the issue of research methodology, with caution. It was given *ad hoc* and left far too many questions unanswered.
35. The fourth shortcoming in Ms Buzo's evidence is that without laying the necessary foundations she initially purported to canvas the very broad thesis that all members of the group constituted by female heads of household in all of Northern and Eastern Sri Lanka are at risk of sexual abuse and exploitation at the hands of the government military forces. Given the contents of Ms Buzo's report and her examination in chief, this appeared to the Tribunal a somewhat extravagant claim. Its unsustainability emerged only when the witness was gently probed in questioning by the Tribunal. In the specific context of this appeal, I consider that Ms Buzo's duties were (a) to candidly acknowledge and confront the limitations of her research methodology and (b) to proactively acknowledge that the quantitative data available to her were manifestly insufficient to make good the sweeping claim noted. It should not have been necessary to leave these important issues to the vagaries of judicial questioning, particularly in the context of evidence given by video link and the enhanced communication difficulties thereby involved.
36. Notwithstanding the reservations expressed above, I am prepared to accept Ms Buzo's evidence relating to increased and decreased risk factors pertaining to female heads of household in the Northern and North - eastern zones of Sri Lanka. This particular aspect of her evidence was plausible and was not challenged in cross examination. Furthermore, it chimes well with other parts of the voluminous documentary evidence which I have read, including in particular the UNHCR report of December 2012 and the unqualified adoption thereof by the Home Office in its Operational Guidance Note of July 2013, together with the second expert's evidence.
37. While the evidence of Dr Gowrinathan suffers from the first and second of the shortcomings applicable to Ms Buzo noted above, the research methodology of Dr Gowrinathan and her co-authors is manifestly superior to that of Dr Buzo. However, the report says nothing of significance about female heads of household in the context of the present appeal. The fleeting and undeveloped reference to female heads of household in the former conflict zone, noted in [21] above, is of particular note when one takes into account the methodology employed in the compilation of the report: it is based upon the interviews of some 50 [the precise number is not given] Tamil women in the Northern region, duly supplemented by

what the authors describe as “*extensive primary source, secondary source and field research on the broader post-war context*”. The witness did not satisfactorily explain this feature of her report when questioned about it by the Tribunal.

38. There were two particularly significant features of the evidence of Dr Gowrinathan. The first is the research methodology noted in [37] above. The second is that Dr Gowrinathan, in measured and manifestly objective terms, gave evidence which in no way detracted from or devalued those aspects of Ms Buzo’s evidence which the Tribunal has accepted: see [36] above.

## **Conclusions**

39. Based on my evaluation of the evidence and findings as set out above, I make the following principal conclusions:

- a. A Tamil female single head of household residing in the former conflict zone of Northern and North Eastern Sri Lanka may be at risk of sexual abuse and exploitation perpetrated by members of police, military and paramilitary State agents.**
- b. The existence and measurement of this risk will be an intensely fact sensitive question in every case. The case-by-case assessment will be informed by the presence or absence of positive risk factors and decreasing risk factors.**
- c. The positive risk factors are living in isolation from others, low socio-economic status, dependence upon the distribution of Government aid or the provision of other services by the security forces and a perception of former LTTE membership, links or sympathies. These positive factors do not necessarily have to be satisfied cumulatively in every case: context will invariably be everything.**
- d. The countervailing factors are higher socio-economic status, little dependence on Government aid or services and the support of male relatives or neighbours. The individual context of the particular case will dictate the force and weight of each of these factors, individually or cumulatively, in any given case. These too will be assessed on a case-by-case basis.**

40. The well established legal test is whether the Appellant is at risk of a reasonable degree of likelihood of persecution in the event of her forcible return to her country of origin, Sri Lanka. There is no dispute that single Tamil female heads of household constitute a particular social group in Sri Lanka and I so find. Nor is there any dispute that the threatened

behaviour under scrutiny would constitute persecution as a matter of law. Furthermore, it is plain – and not in dispute – that the Appellant’s fear is well founded. In addition, the possibility of safe internal relocation does not feature in the Secretary of State’s impugned decision and was not raised before me.

41. The application of the template set forth in [38] above to the Appellant’s case readily yields the conclusion that all of the positive risk factors are present and these are not counter balanced by any of the countervailing factors. There is no evidence of any of the latter in relation to the Appellant’s present and predicted context and circumstances.
42. The Appellant’s case highlights the importance of individual factors and characteristics. In her case there is the additional factor of very significant mental vulnerability. This is established by the evidence summarised in [11] - [13] above which I find persuasive and balanced and which was not challenged on behalf of the Secretary of State. This dimension elevates significantly the risk in the Appellant’s case. Having regard to the combination of the positive risk factors, the absence of any decreased risk factors and the Appellant’s vulnerable and compromised mental state, I conclude that she would be at real and substantial risk of sexual abuse and exploitation perpetrated by agents of the Sri Lankan state namely military forces, police and state sponsored paramilitaries in the event of returning to her former place of residence in northern Sri Lanka.
43. It follows inexorably, bearing in mind the lower standard of proof in play, that the Appellant has discharged her onus of establishing her entitlement to the protection of asylum. I would add that she has done so comfortably. The Appellant is a clear winner in this appeal.
44. On essentially the same grounds and for substantially the same reasons, the Appellant’s case satisfies the tests adumbrated in GJ and Others [2013] UKUT 319 (IAC). In particular, the ill-treatment of which the Appellant would foreseeably be at risk includes degrading sexual assault and rape, of which there may be multiple instances. It follows that the Appellant’s case under Article 3 ECHR succeeds also.
45. Given the aforementioned two conclusions, it is unnecessary to consider either the Appellant’s claim for humanitarian protection or her discrete Article 3 claim based on risk of suicide.

## **DECISION**

46. I remake the decision of the FtT allowing the Appellant’s appeal against the dismissal of her asylum and Article 3 ECHR claims.



*Amund McCloskey.*

THE HON. MR JUSTICE MCCLOSKEY  
PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

**Date: 31 January 2017**