

Sri Lanka:
Human Rights
and
Return of Refugees



Sri Lanka Project
The Refugee Council
United Kingdom
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Sri Lanka: Human Rights and Return of Refugees

Executive Summary

Sri Lanka has been ravaged by ethnic war for the past eighteen years. Legislative and administrative measures after independence in 1948 effectively denied equal rights to the minorities in violation of international human rights instruments. The failure of successive Sri Lankan governments to provide sufficient guarantees of minority rights, led to the emergence of Tamil militancy in the mid-1970s. The armed rebellion gained momentum after the major violence in 1983 against the Tamil community. Negotiations between the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan governments in the late 1980s and mid 1990s failed and the continuing armed conflict has led to grave violations of human rights, massive displacement within Sri Lanka and a flood of refugees to other countries. The violations of human rights have been committed by government forces, the LTTE and Tamil groups fighting on the side of the Sri Lankan security forces.

Since 1983, some 917,000 Sri Lankans, the vast majority of them Tamils, have fled the country and over 700,000 are internally displaced. Despite the continuing security force violations of human rights and failure of the Sri Lankan authorities to take effective measures to prevent abuses, only a small percentage of Tamils have been recognized as refugees under the UN Convention in Britain and other countries, the exceptions being France and Canada. In Britain, only 1.6% of the 42,000 Sri Lankans who applied for asylum between 1980 and 2000 were granted refugee status under the Convention. The Home Office rejected 88% of the applications in 2000.

Within Sri Lanka, there continue to be large-scale arrests and long-term detentions, often without bail or trial. The UN Committee Against Torture and Amnesty International have expressed concern over continuing torture, including the torture of women and children and death in custody. The security forces have murdered several Tamil women after gang rape and have also executed hundreds of Tamils extra-judicially. According to the UN Working Group on Disappearances, more than 11,600 disappearances in Sri Lanka remain unclarified.

Human Rights agencies and UN bodies have pointed out that impunity remains a serious problem in Sri Lanka. Commissions investigating 27,000 disappearances have identified 4,000 security force perpetrators, but charges have been brought only against 500. Furthermore, no independent investigations have been carried out into disappearances after 1994, including the disappearances of 540 Tamils in Jaffna in 1996. Although a law was introduced in 1994 against torture, there have been no convictions. A large number of extra-judicial executions remain uninvestigated.

The Liberation Tigers of Tamil Eelam (LTTE) and Tamil groups fighting on the side of the Sri Lankan security forces have also been involved in grave violations of human rights, extortion, recruitment of children and political assassinations.

Since 1979, the government has had enormous powers to arrest and detain under the Prevention of Terrorism Act (PTA). The PTA, which has been criticized by the UN Human Rights Committee, also reduces the powers of the courts and places severe limits on the freedom of movement of Tamils within Sri Lanka.

Sri Lanka is one of the countries targeted by the European Union's (EU) High Level Working Group (HLWG), which has produced action plans for economic co-operation with the country of refugee origin, assistance in the reception of displaced people in the region of origin, safety of returning refugees and internal settlement alternatives.

Among the objectives set out in the Action Plan for Sri Lanka are to improve human rights, to make the Sri Lankan Human Rights Commission a truly independent body, persuade the Sri Lankan authorities to pass the Chemmani mass graves investigation to an independent body, to persuade the authorities to repeal the PTA and reduce poverty. The EU has failed in all these objectives. The EU has also failed to prevent erosion of democracy such as ensuring violence-free elections.

Against this backdrop of continuing abuse and human rights violations the Western governments, including Britain, have failed to ensure that refused asylum seekers can return in safety: Many Tamils returned to Sri Lanka from other countries are arrested on arrival.

It is of critical importance that the Sri Lanka Country Assessment of the British Home Office prior to 2000 failed to acknowledge the scale and seriousness of the human rights violations in Sri Lanka. Following representations from the Refugee Council and other organizations, the report was improved, though several concerns remain. However, the improvements to the Country Assessment are not reflected in the poor quality of the asylum decisions and the refusal rates remain high.

This new report details concerns over human rights violations and highlights the areas where Western governments have failed to meet their international obligations. The conclusions outline nine specific observations arising from this.

Sri Lanka: Human rights and return of refugees

1. Introduction

FIFTY years have elapsed since the adoption the UN Convention on Refugees. The signatories to the Convention met in December 2001 and adopted a declaration of their commitment to the international treaty and to the principles of refugee protection. This commitment leads to obligations and responsibilities in international protection. But the increasing trend is for industrialised countries to seek to transfer responsibility of protection to developing nations.

Refugee agencies in Britain and elsewhere have continued to express concern about repatriation of Sri Lankan asylum seekers, while large-scale human rights violations are being committed in the context of an armed conflict in the island. This report examines human rights abuses which contribute to internal displacement and refugee flight abroad, with special reference to the long-standing concerns raised by the organs of the United Nations and other international agencies. The report also deals with legislation introduced in Sri Lanka and the impact of government measures on the civilian population and refugee returnees.

2. Background

Sri Lanka has been embroiled in a devastating ethnic war for the past 18 years, prompting a writer to say that 'nowhere has war embedded itself more malignantly into the normal workings of a nation'.¹ Legislative and administrative measures introduced after independence in 1948 in the fields of education, employment, use of language and economic development, have effectively denied equal rights to the minorities in violation of a number of international instruments to which Sri Lanka is a signatory (Annex I). The failure of successive Sri Lankan governments to implement political agreements with minority leaders led to further deterioration of relations between the Tamil and Sinhalese communities. Discrimination and violence led to armed rebellion in the late 1970s, which gained momentum after the major violence in July 1983 against the Tamil community.

In July 1987, the Sri Lankan and Indian governments entered into an agreement, which envisaged limited autonomy to the Tamil-dominated North-East Province. But fighting broke out in October 1987 between the Liberation Tigers of Tamil Eelam (LTTE) and the Indian Peace Keeping Force (IPKF). The Indian government was forced to withdraw the IPKF in March 1990.

Negotiations between the Sri Lankan government and LTTE broke down in 1990 and the war resumed with increasing ferocity. Over a million people, the majority of them in the northern and eastern provinces, were internally displaced and thousands fled the country. Talks between the People's Alliance (PA) government and the LTTE in 1995 also failed. In January 2000, Norway became involved in shuttle diplomacy in the conflict, but has

¹ Tony Clifton - "Lost in the hell of war" in *Newsweek* magazine 5 April 1999

not been able to achieve a breakthrough. The commitment to peace is in doubt as both sides have embarked on new recruitment and rearmament. The United National Front (UNF) coalition led by the United National Party (UNP) was elected to government in December 2001. But the President who is from the opposition PA remains in power and the stage is set for a new power struggle. The armed conflict has led to grave violations of human rights, massive displacement within Sri Lanka and a flood of refugees to other countries, while political and economic instability continues to consume the island.

3. Sri Lankan asylum seekers – comparative statistics

UNHCR estimates that 917,000 Sri Lankans, the vast majority of them Tamils, have fled the country since 1983 and 714,000 are internally displaced.² This includes around 120,000 (70,000 in Tamil Nadu government camps and an estimated 50,000 outside camps within the state of Tamil Nadu) Sri Lankan refugees in India. Although there is strong evidence of persecution, the recognition rate for Tamil asylum seekers has remained low in most countries, the exceptions being Canada and France.

In Europe, 156,926 applications were made by Sri Lankan asylum seekers between 1989 and 1998. In this period, 27,336 (17.4%) were granted UN Convention refugee status and 17,524 (11.2%) were given humanitarian leave to remain (the total recognition rate being 28.6%). During the same period, 23,456 applications were submitted in France of which 17,409 (74.2%) were granted Convention status. In Canada, 31,271 asylum seekers applied and 25,469 (81.4%) were recognized as Convention refugees.

Between 1989 and 1998, 190,872 Sri Lankans applied for asylum in Europe, North America and Australia. Of this number, 53,305 (27.9%) were given Convention status and 17,524 (9.2%) were granted humanitarian leave (the total recognition rate for Sri Lankan asylum seekers throughout the world being 37.1%)³

In Britain, 41,985 asylum applications were received from Sri Lankans between 1980 and 2000. Only 685 (1.6%) were granted Convention refugee status and 14,500 (35%) given Exceptional Leave to Remain (ELR) on humanitarian grounds. Some 14,095 (34%) applications have been rejected. Presumably, no decisions have been made on the remaining 30% of the applications. Since 1993, despite the deterioration in the situation in Sri Lanka, the rejection of asylum applications has increased dramatically and humanitarian leave reduced to small numbers.

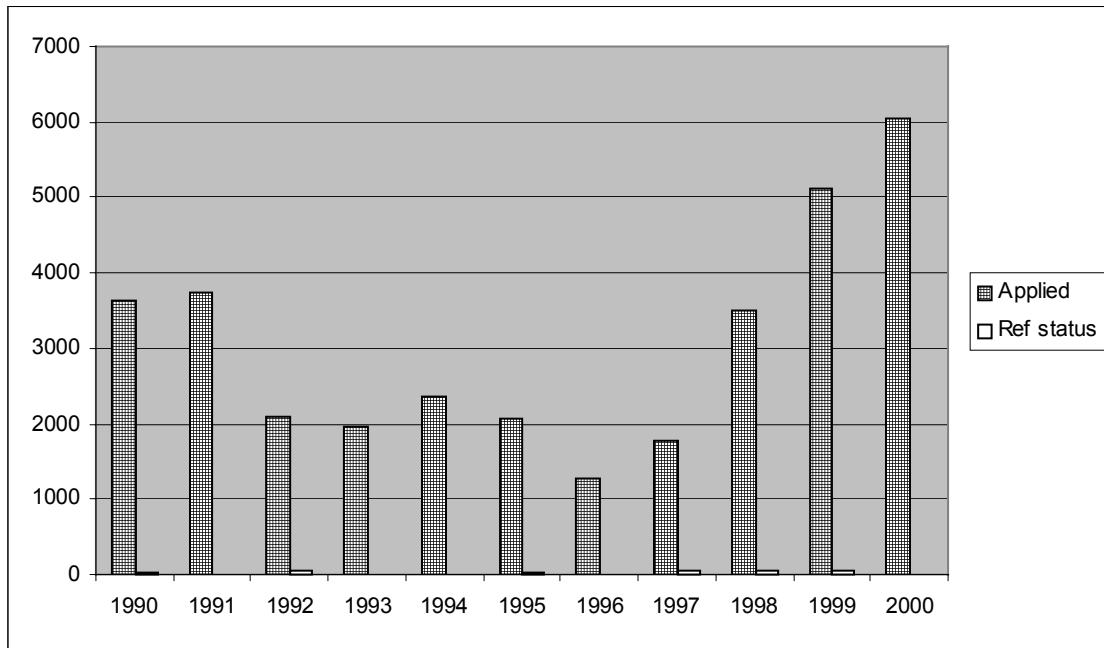
In 2000, the Home Office made decisions on 4,600 applications. Only 400 (9%) were granted refugee status and 165 (4%) ELR. The Home Office rejected 4,035 (88%) applications. Almost 16% of the refusals were on non-compliance grounds.⁴ Rejections on non-compliance grounds rose from 1% in August to 43% in October 2000.⁵

² UNHCR Refugee NewsNet – www.unhcr.ch/refworld

³ UNHCR - *A global statistical assessment of asylum applications and refugee determination - Origin: Sri Lanka*, 20 March 2000

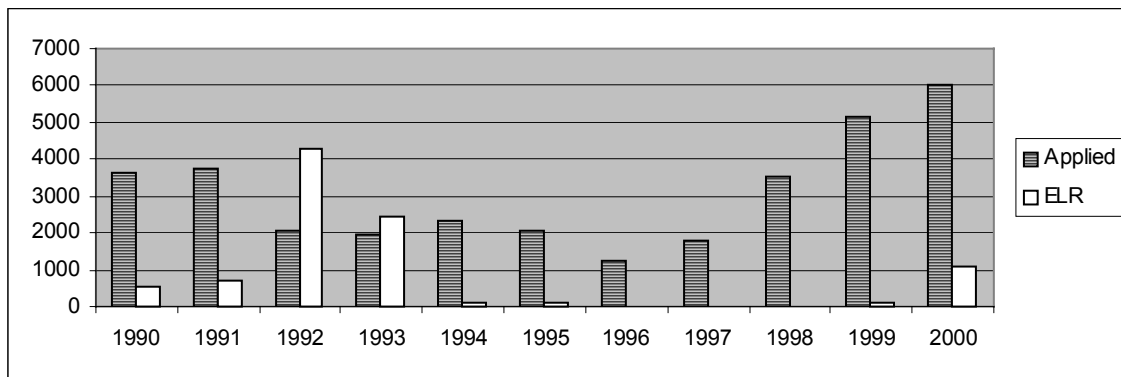
⁴ Refusal on non-compliance grounds is for failure to submit the Statement of Evidence form in time, failure to complete the form in full and failure to attend or late arrival at interviews.

⁵ UK Home Office - Asylum statistics - www.homeoffice.gov.uk



Britain: Sri Lankan asylum applications - Refugee status 1990 - 2000

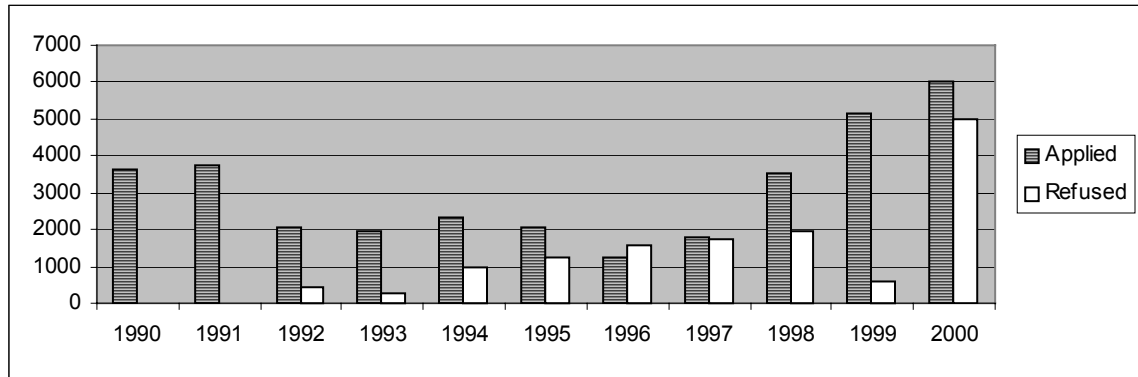
Between January and September 2001, 4,025 applications were received. The Home Office made decisions on 8,765 applications during the same period. Convention status was granted to 1,170 (13%) and ELR to 400 (5%). In this period, some 7,185 (82%) applications were refused.



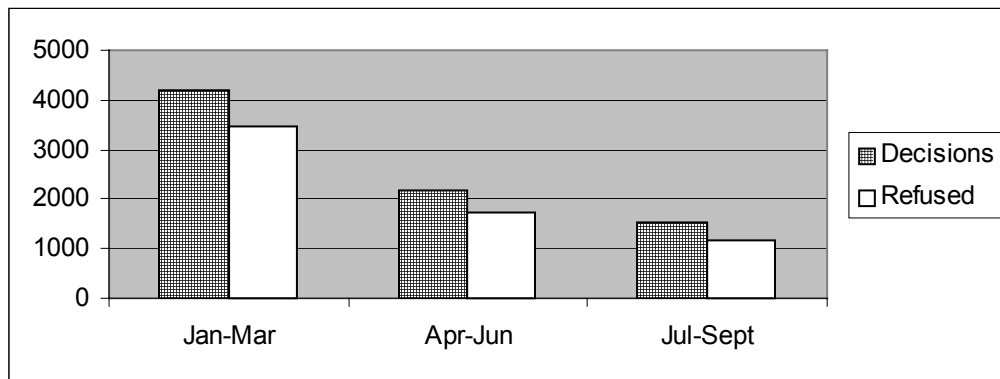
Britain: Sri Lankan asylum applications - ELR 1990 - 2000

In 1998, 48% of the 1,040 appeals by Sri Lankan asylum seekers against refusal were successful, resulting in grants of refugee status or direction to the Home Office to reconsider the decision. Between January and September 2001, 1,400 appeals were successful before Immigration Adjudicators and 65 before the Immigration Appeal

Tribunal.⁶ This is a clear indication that the initial decisions by the Home Office on asylum applications are flawed.



Britain: Sri Lankan asylum applications - Refusals 1990 -2000



Britain: Sri Lankan asylum applications - Refusals January - September 2001

4. Bilateral agreements

Five European countries have signed agreements with the Sri Lankan government for the repatriation of rejected Sri Lankan asylum seekers - Switzerland (9 June 1993), Netherlands (24 October 1997), Denmark (18 August 1998) Norway (6 March 2000) and Italy (24 September 2001). Sri Lanka is involved in negotiations with the European Commission for a multilateral agreement on rejected asylum seekers. According to the Sri Lankan Foreign Ministry, 'these agreements are designed to discourage, inter alia, human smuggling that provides a ready source for fundraising on foreign soil by terrorist groups and their sympathizers operating abroad'.⁷

⁶ Lord Rooker, Home Office Minister - Written answers to questions, House of Lords Hansard 17 December 2001 Column WA2

⁷ Sri Lanka Foreign Ministry press release 24 September 2001

At the time of the Swiss agreement, widespread concern was raised. NGOs, including the British Refugee Council and the Swiss Organisation for Aid to Refugees (OSAR) condemned the agreement, pointing out the dangers in the north-east war zone and southern Sri Lanka, including the capital Colombo.⁸ Norway and Sri Lanka signed an agreement in March 2000, barely two months after the Scandinavian nation became involved in the peace process. At that time, the Sri Lankan Foreign Ministry maintained that the Norwegian agreement is recognition that human rights in the island have improved.⁹

The agreements envisaged the return of 300-350 refugees from each country in a year and stipulated that the Sri Lankan government would issue them passports or other document of identity. Other countries such as Canada, Germany, Poland and France have deported a large number of Sri Lankan asylum seekers without any agreement with Sri Lanka.

In the case of the Swiss agreement, UNHCR took an active role in negotiating the agreement and its involvement effectively endorsed it. Observers have stated that the Swiss return scheme was about immigration control and it resulted in a series of negative consequences for the Tamil asylum population, the Swiss as hosts, Swiss-Sri Lanka relations and perhaps also negative consequences for the course of the conflict in Sri Lanka.¹⁰ Between 1994 and 2000, 1,116 Sri Lankans were returned under the agreement, but during the same period 13,000 Sri Lankans asylum seekers entered Switzerland seeking safety from persecution and intensified fighting in Sri Lanka.¹¹

The Sri Lankan Foreign Ministry said in September 2001, that Sri Lanka and Britain had signed a refugee repatriation agreement.¹² It is not known when the agreement was signed and the details of the pact have not been made public.

5. UN and European Conventions

5.1 Freedom from torture

The right to freedom from torture is a non-derogable right. Article 3 of the UN Convention against Torture provides:

“1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

⁸ Swiss Organisation for Aid to Refugees (OSAR) – *The Time is not yet ripe*, 1994

⁹ *Sri Lanka Monitor* March 2000

¹⁰ Christopher McDowell – The point of no return: The politics of the Swiss Tamil repatriation agreement, in *The end of the refugee cycle: Refugee repatriation & reconstruction*, eds. Richard Black & Khalid Koser

¹¹ *Migration News Sheet*, December 2000 - Migration Policy Group, Brussels

¹² Sri Lankan Foreign Ministry press release, op.cit. 24 September 2001

In relation to Sri Lankan asylum seekers, UNHCR has stated as follows:

“UNHCR is of the view that Sri Lankan asylum seekers, whose claims have been processed through full and fair procedures and found not to fulfil the refugee criteria may be returned safely to Sri Lanka (this does not obviate other reasons for non-return such as is contemplated under the Torture Convention)”¹³

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) prohibits ‘torture, inhuman and degrading treatment or punishment’. The prohibition is an absolute one and there can be no justification for acts in breach of the provision. The protection against ill-treatment contrary to Article 3 is equally absolute in the context of expulsion.

5.2 Racial discrimination

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that State Parties undertake to eliminate racial discrimination and to guarantee equality before law and the enjoyment of the right to equality of treatment before tribunals and bodies administering justice. Article 14 of the European Convention prohibits discrimination on the basis of race, language or religion.

On 14 August 2001, the UN Committee on the Elimination of Racial Discrimination expressed concern over restrictions placed on civil and political rights in Sri Lanka under the Prevention of Terrorism Act (PTA) and Emergency Regulations (ER) and their allegedly discriminatory application with regard to Tamils. The Committee reminded Sri Lanka of the obligations to conduct exhaustive and impartial investigations into allegations of human rights violations involving racial discrimination and to bring to justice those responsible.¹⁴

The Committee also expressed concern that a large number of Tamils of Indian origin and their descendants, particularly plantation workers still had not been granted citizenship, many of them continuing to be stateless. The Committee noted that Tamils without Sri Lankan citizenship, were allegedly discriminated against and did not fully enjoy their economic, social and cultural rights.¹⁵

5.3 Right to life

The right to life is guaranteed under Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of ECHR. No derogation is permitted as far as right to life is concerned.

¹³ UNHCR – *Background paper on Sri Lanka for the EU High Level Working Group on Asylum and Migration*, 18 March 1999

¹⁴ UN Press Release 14 August 2001, CERD 59th Session

¹⁵ *ibid.*

The UN Special Rapporteur on Arbitrary Executions Ms Asma Jahahir, in her 2001 report said that she has transmitted urgent appeals to the Sri Lankan government regarding civilians in Jaffna, violations to the right to life, deaths due to excessive force by security forces, deaths in custody and failure of authorities to take effective measures to prevent extra-judicial killing. The Rapporteur has also sent several communications regarding civilians allegedly killed in air strikes and other operations of the Sri Lankan armed forces. She expressed deep concern over extra-judicial killings carried out by government forces and armed groups sponsored, supported or tolerated by the government.¹⁶

5.4 Right to liberty and security of person

Article 9 of the ICCPR provides as follows:

'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest and detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law'.

Article 5 of the ECHR contains similar provisions.

The UN Working Group on Disappearances said in 1999 that 'frequently the Army and the police would cordon-and-search villages and detain scores of people'.¹⁷ Human rights agencies, including Amnesty International and Sri Lanka-based Home for Human Rights have reported over 76,000 arrests of Tamils between 1990 and August 2001.¹⁸

6. Violation of human rights and fundamental freedoms

Human rights violations have been committed on a large scale in Sri Lanka for many years by all parties in the conflict and these have been recorded by local and international agencies, including Amnesty International and the UN Treaty Monitoring Bodies.

6.1 Torture

Amnesty International says that torture continues to be reported almost daily and the scale of the problem is borne out by many testimonials from victims of torture, medical certificates, judgments of the Sri Lankan Supreme Court in fundamental rights cases as well as commissions of inquiry and other investigative bodies appointed by the government¹⁹ (See Annex II and Annex III - Reports of government Judicial Medical Officers in the cases of Pichchamuttu Chandran and Sinnarasa Anthonymala). Amnesty has also reported torture of women and children, rape and death in custody. The London-based Medical Foundation for the Care of Victims of Torture has recorded torture and

¹⁶ Report of the Special Rapporteur dated 11 January 2001 - E/CN.4/2001/9

¹⁷ Report of a visit to Sri Lanka dated 21 December 1999 - E/CN.4/2000/64/Add.1

¹⁸ Annual reports of Amnesty International and monthly reports of Home for Human Rights

¹⁹ Amnesty International – *Sri Lanka: Torture in custody*, June 1999 ASA 37/10/99

sexual abuse of Tamil male detainees.²⁰ The various torture methods used by the security forces have also been documented (See Annex IV - Annual report 1998 of Colombo human rights agency the Family Rehabilitation Centre).

Under the Prevention of Terrorism Act (PTA) [and Emergency regulations (ER) before July 2001], confessions to the security forces are admissible as substantive evidence, although under normal law they are inadmissible.²¹ This provides the license for the security forces to resort to torture in order to extract a confession. In a large number of cases, the confession is the only evidence available and often it is in the Sinhala language, which many Tamils do not understand. After round-ups in Colombo, many Tamils are subjected to degrading treatment even if they are not tortured. Sri Lankan human rights agency, the Forum for Human Dignity says as follows:

“The great majority of those held in round-ups will be released within 24-48 hours and torture is very unlikely to occur during this period. However, punching and kicking are a common part of the experience of being detained by the police in Colombo for Tamils.”²²

Sri Lanka ratified the UN Convention against Torture in 1994 and in the same year introduced the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act. Although the government claims that some security personnel have been charged, up to November 2001, no one has been convicted for the crime of torture. The Supreme Court has power to grant compensation in fundamental rights applications, but has no authority to punish offenders. The Supreme Court has, on several occasions, urged the Attorney General to bring legal action against the perpetrators. According to Amnesty International, the powers of the national Human Rights Commission (HRC), appointed in 1996, to receive and investigate reports of torture have rarely been used. Many people, including detainees who were tortured in custody and subsequently complained to the HRC have not received any response.²³

6.2 Victims of sexual violence

The security forces have committed rape on many Tamil women, mainly in the north-east of Sri Lanka and several of them have been murdered. The UN Special Rapporteur on Violence Against Women, Ms Radhika Coomaraswamy, made the following statement in 1999:

“Many communications had been forwarded to Sri Lanka, almost all concerning women and girls of Tamil origin in the northern and eastern provinces, who had suffered sexual violence at the hands of the military”.²⁴

²⁰ Medical Foundation for the Care of Victims of Torture – *Caught in the middle: A study of Tamil torture survivors coming to the UK from Sri Lanka*, June 2000

²¹ Sections 24-26 of the Evidence Ordinance, applicable in normal cases

²² Statement of the Forum for Human Dignity dated 3 March 2001

²³ Amnesty International – *Comments on the EU High Level Working Group Action Plan for Sri Lanka*, 9 March 2001

²⁴ Report of the UN Special Rapporteur on Violence Against Women to the UN Commission on Human Rights (UNCHR), March 1999

In 2001, the Special Rapporteur said that ‘Sri Lankan security forces continued to commit serious human rights abuses, including sexual violence’ and that the ‘Sri Lankan police have also reportedly committed rape and other sexual abuse in the course of the fighting’. She also noted that in the Eastern Province and the Vavuniya District, there are allegations of rape and extra-judicial killings being conducted by groups which are allied to the government.²⁵

Jaffna student Krishanthi Kumarasamy was gang-raped and murdered at a security force checkpoint in September 1996.²⁶ Three members of her family and a neighbour, who went in search of her, were also murdered. Batticaloa resident Ehamparam Damayanthi was awarded Rs 50,000 (\$770) compensation by the Supreme Court in February 1998. The Court awarded maximum compensation to 15 year-old Damayanthi who was tortured and sexually assaulted by soldiers at an Army camp.²⁷

Geneva-based World Organisation Against Torture (OMCT) says S Sarathambal, 20, was gang-raped and murdered by Navy personnel on Pukudutivu Island near Jaffna in December 1999.²⁸ Two young Tamil women, Sivamany Veerakone and Vijikala Nandakumar were raped and tortured by security personnel in March 2001 at the police Special Investigation Unit in Mannar.²⁹ On 24 June 2001, Tamil widow Velu Harshadevi was gang raped by security force personnel at a checkpoint in the capital Colombo.³⁰ Amnesty International says that the pace of investigations into several cases of alleged rape, including the case of Ida Karmalita, raped and murdered by security forces in Mannar District in July 1999, are proceeding very slowly. Other cases have collapsed because victims or witnesses were threatened or feared reprisals.³¹

6.3 UN Committee against Torture

The following concerns about Sri Lanka were raised by the UN Committee against Torture in 1998:

“249. The Committee is gravely concerned by information on serious violations of the Convention, particularly regarding torture linked with disappearances.

250. The Committee regrets that there were few, if any, prosecutions or disciplinary proceedings despite continuous Supreme Court warnings and awards of damages to torture victims.

251. The Committee notes the absence, until recently of independent and effective investigation of scores of allegations of disappearances linked with torture.

²⁵ Report of the Special Rapporteur dated 23 January 2001 - E/CN.4/2001/73

²⁶ Law and Society Trust - *Sri Lanka: State of human rights 1997*

²⁷ Amnesty International - *Torture in custody* op.cit.

²⁸ OMCT, Geneva - *Violence against women*, LKA 050100.VAW 5 January 2000

²⁹ Centre for Human Rights and Development - *Arrest, torture and rape while in custody*, 19 April 2001

³⁰ Home for Human Rights (Sri Lanka), *Mother of two raped by security forces*, 28 June 2001

³¹ Amnesty International - Sri Lanka: Security forces getting away with rape - ASA 37/006/2001

252. The Committee noted that, while the Convention against Torture Act 22/94 covers most of the provisions of the Convention, there were certain significant omissions.

253. The question of the admissibility under the emergency regulation of confessions is also a matter of concern, as well as the absence of strict legislation governing detention consistent with international norms.³²

These concerns remain and the Sri Lankan government has failed to take effective action to end the practice of torture by the security forces.

6.4 Disappearances

Amnesty International has pointed out that the prevalence of torture in Sri Lanka is intrinsically linked with other human rights violations, particularly the long-term pattern of disappearances.³³ The UN Working Group on Disappearances recommended in 1991 that the PTA and ER, which provide extensive powers to the security forces, thus encouraging human rights violations with impunity, should be abolished or brought in line with internationally accepted standards, as they violate the provisions of the ICCPR.³⁴ The Working Group expressed concern that its recommendations, including the setting up of a central register for detainees and the observance of safeguards for the prevention of arbitrary arrests, particularly the legal obligation to inform the HRC of arrests and detention, had been disregarded by the Sri Lankan government. The Working Group said in December 2000 that it had received reports of increased enforced disappearances since new ER were introduced in May 2000. The wider powers given to security forces under the new regulations and removal of several safeguards against arbitrary arrest and detention may have contributed to the increase.³⁵

Although the state of Emergency lapsed in July 2001, the PTA remains in force. On 11 July 2001, the Sri Lankan President Chandrika Kumaratunge invoked Part III of the Public Security Ordinance, which provides her wide powers without declaration of a state of Emergency.

The UN Working Group has stressed that Sri Lanka remains the country with the second largest number of unclarified disappearances in the world, next to Iraq. Between 1980 and 2000, the Working Group received reports of 12,277 disappearances of which 11,682 remain unclarified (Iraq - 16,514 reports and 16,384 not clarified).³⁶ Although the four commissions appointed to probe disappearances between 1988 and 1993, have investigated over 27,000 disappearances, the government has brought charges only against 500 of the 4,000 offenders identified as perpetrators. Many of the perpetrators continue to serve in the security forces or have been promoted. The People's Alliance government has not allowed independent commission investigations into disappearances

³² Concluding observations of the Committee against Torture: Sri Lanka 19/05/98 - A/53/44, paras.243-257

³³ Amnesty International - *Torture in custody* op.cit.

³⁴ Report of the Working Group on Enforced Disappearances on a visit to Sri Lanka 25-29 October 1999 E/CN.4/2000/64/Add.1

³⁵ Report of the Working Group dated 18 December 2000 - E/CN.4/2001/68

³⁶ *ibid.* Annex I

during its tenure of office, including the disappearance of 540 Tamils in 1996, after the Army captured the Jaffna peninsula.³⁷

6.5 Arrest and detention

Large-scale round-ups of Tamil civilians continue to take place, particularly following LTTE attacks. Detention for over 48 hours for further investigation is faced in particular by younger Tamils who speak little Sinhala language, if the papers produced by them show them to be born in Tamil areas or if they cannot give any valid reason for their presence in Colombo or other parts of southern Sri Lanka. The likelihood of further investigation is also high for those suspected of LTTE membership and those who have visible scars.³⁸ Colombo human rights agency, the Centre for Human Rights and Development has reported that 18,000 arrests were made in the year 2000. According to the US State Department, the number of prisoners at any given time under the PTA and ER remained close to 2,000 and hundreds of Tamils indicted under the PTA remained without bail awaiting trial, some for more than two years.³⁹ In February 2001, a European Union delegation expressed concern over prolonged detention of Tamils in Sri Lanka.⁴⁰

The Magistrates Court in northern Vavuniya said in March 2001 that the police were acting in breach of national and international law and warned them not to subject detainees to degrading treatment such as covering their eyes and tying their hands.⁴¹ The court instructed military commanders in May 2001 to end the practice of detention in unauthorized places.⁴² But allegations continue to be made that people are held in places of secret detention. Amnesty International says that ‘those detained by Tamil armed groups working with the Sri Lankan security forces, such as PLOTE (People’s Liberation Organisation of Tamil Eelam) are frequently tortured or disappeared in custody’. Many of the disappeared are suspected to have been tortured to death in secret places of detention.⁴³

Arrest and detention are often illegal. The Supreme Court ruled in the Vijayan Vimalendran case in 1996 that at the time of the arrest, the person must have committed an offence or there was reasonable ground for suspecting that he/she was concerned in or had committed an offence. The Court said the position that ‘some evidence may eventually turn-up to make suspicions appear to be reasonable’ is not sufficient.⁴⁴ In July 2000, the Supreme Court ordered the government to pay Rs 100,000 (\$1,280) compensation to Tamil traders M Sathananthan and V Jeyaranjith for illegal arrest and

³⁷ Amnesty International – *Sri Lanka: Government’s response to widespread “disappearances” in Jaffna*, November 1997 ASA 37/24/97

³⁸ Dutch Foreign Ministry 1997 report

³⁹ US State Department – *Sri Lanka: Country report on human rights practices 2000*, February 2001

⁴⁰ *The Island* (Colombo) 26 February 2001

⁴¹ *Sri Lanka Monitor* March 2001

⁴² *Sri Lanka Monitor* May 2001

⁴³ Amnesty International Urgent Action - ASA 37/009/2001 - *Disappearance of Karupaiyah Suntharerasa and Sivarasa Sasikumar*, 3 July 2001

⁴⁴ SC Case No. 26/94, judgement dated 20 December 1996

detention.⁴⁵ Despite these decisions, the security forces continue to round-up Tamils in cordon and search operations.

6.6 Regulations under the PTA

Regulations made by President Chandrika on 6 July 2001 under the PTA, provide that 'any person who had been remanded by a Magistrate in connection with an offence in terms of any other written law, and has also been connected with or reasonably suspected of being connected with any unlawful activity within the meaning of the PTA, shall be deemed to have been remanded under the provisions of the PTA'.⁴⁶ In effect, all detentions made under the ER have been brought under the PTA, and despite the lapse of the Emergency, Tamils detained in respect of offences under the ER, continue to be detained.

Legal experts are of the opinion that these regulations violate the fundamental rights provisions of the Sri Lankan Constitution. Firstly, the arrests were made under a specific law and current detention is under a different law. Secondly, according to the experts, introduction of the regulations have the effect of restricting the rights guaranteed under the Constitution in a manner other than specified by the Constitution itself.

President Chandrika also made regulations in July 2001, specifying 350 authorized places (Police stations and Army camps) for custody of people in terms of Detention Orders (DO) issued by the Defence Minister under the PTA.⁴⁷ According to human rights agencies, most incidents of torture take place in police stations and Army camps.

A person arrested under the PTA must be produced before a Magistrate within 72 hours, unless the Defence Minister has issued a DO. In issuing the DOs, the Minister can extend detention up to 18 months, imposing any condition. The decision of the Minister is final and cannot be called into question in any court.⁴⁸ If a DO has not been issued, then the Magistrate has no discretion but to issue a Remand Order for an indefinite period until the case comes up for hearing before the High Court, if the police make such a request.⁴⁹

Delays on the part of the police and the Attorney General's Department result in prolonged detention without trial. Sri Lankan Attorney-at-Law A Vinayamoorthy has provided examples.⁵⁰ Erik Soundaranayagam was arrested on 7 October 1999, but the indictment was served only in October 2001. Indictments on six Hill Country Tamil detainees were served on 12 July 1999 although they had been arrested in Kandy on 4 June 1998. The case was heard before the Kandy High Court on six occasions and postponed for various reasons such as amendment of charges and witnesses not being present. By the next hearing on 16 January 2002, they would have spent 43 months in detention without trial.

⁴⁵ *Sri Lanka Monitor* July 2000

⁴⁶ Prevention of Terrorism Regulations No. 2 of 2001 - Government Gazette No. 1191/19 of 6 July 2001

⁴⁷ Notification under Section 9 of the PTA - Government gazette No. 1195/7 of 30 July 2001

⁴⁸ Sections 9 and 10 of the PTA

⁴⁹ Section 7 of the PTA

⁵⁰ Statement of Mr A Vinayamoorthy, Attorney-at-Law dated 1 March 2001

According to Mr Vinayagamorthy, there is a delay of two to three years in about 55% of the cases and three to four years delay in 35% of the cases. In 10% of the cases, there is a delay of more than five years. Kandasamy Lingeswaran, who is held in the Boossa detention centre in Galle District, has spent eight years in detention without trial.

Regarding arrest and detention, UNHCR has stated as follows:

“While occasional arrests and other short term detentions do not amount to persecution, continuous and frequent arrests and other harassments from the security forces may cumulatively amount to persecution. At the same time, since it is widely reported that security forces inflict torture on detainees during interrogations under confinement to elicit information, where there is evidence that torture has taken place, even if the detention is short-term, it would amount to persecution.”⁵¹

6.7 Treatment of detainees

According to Sri Lankan MPs, detainees under the PTA are held in appalling conditions. Lawyers say that the prison in Negombo where detainees under the Immigrants and Emigrants Act are held, is designed to accommodate 225 prisoners, but 1,200 are detained in the prison. In Kalutara and Colombo's Magazine prisons, PTA prisoners are held in cramped conditions. In Kalutara some 50 prisoners are held in wards 800 sq ft in extent.⁵² Following an inspection of Kalutara prison, the Sri Lankan Human Rights Commission (HRC) reported in March 2000 that detainees were not being provided with adequate medicines and medical facilities. UNHCR confirms that conditions in prisons and remand homes are extremely poor.⁵³

The UN Special Rapporteur on Arbitrary Executions reported that detainees in Kalutara prison, south of Colombo, were attacked on 7 January 2000 by prison officers. They opened fire killing a detainee.⁵⁴ The Geneva-based Centre for the Independence of Judges and Lawyers said in 1997 that regulations governing conditions of detention under the PTA are wholly inadequate, and urged Sri Lanka to comply with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the UN in 1988 (Resolution 43/173).⁵⁵ But Sri Lanka has failed to take any action in this regard.

6.8 Extra-judicial executions

Sri Lankan security forces have carried out hundreds of extra-judicial executions. In 2001, the UN Special Rapporteur on Arbitrary Executions welcomed the replies of the Sri Lankan government relating to enquiries on extra-judicial executions, but expressed deep

⁵¹ UNHCR report to the EU HLWG, 18 March 1999 op.cit.

⁵² *Sri Lanka Monitor* August 2001

⁵³ UNHCR - *Background Paper on refugees and asylum seekers from Sri Lanka*, June 2001

⁵⁴ Report of Special Rapporteur op.cit. E/CN.4/2001/9

⁵⁵ Centre for Independence of Judges and Lawyers - *Judicial independence in Sri Lanka*, Report of a Mission 14-23 September 1997

concern over increasing reports of actions allegedly carried out by members of the security forces in which a large number of civilians have lost their lives.⁵⁶

The US State Department has stated as follows:

“Police, home guards and army personnel committed extra-judicial killings....In most cases the security forces claimed that the victims were members of the LTTE, but human rights monitors believe otherwise”.⁵⁷

The Special Rapporteur on Arbitrary Executions reported the death of 15 elderly people and wounding of 32 others in artillery attacks in Jaffna in May 2000 on a home for elderly people. The wounded could not receive proper medical treatment because of shortage of medical facilities due to the economic embargo on this area. The Rapporteur urged the Sri Lankan government to ensure that military forces take all possible steps to protect the safety and security of civilians and persons *hors de combat* when conducting their operations, in accordance with international human rights and humanitarian law standards.⁵⁸

Many Tamils have been killed in detention. Twenty seven Tamils were massacred by villagers in a rehabilitation centre in Bandarawela in October 2000. The young men were LTTE members who had surrendered or suspects sent for rehabilitation under Emergency regulations. In her representation to the Sri Lankan government, the UN Special Rapporteur on Arbitrary Executions raised her concerns over allegations that police officers at the centre did not intervene and that some police officers had been involved in inciting the villagers or may have assisted them in entering the centre.⁵⁹ In December 2000, the security forces murdered eight Tamils at Mirusuvil in Jaffna and buried their bodies in a mass grave. Among them was a five year-old child Vilvarajah Prasath, whose knees and ankles were broken and stomach pulverized - indicating that he was tortured before his throat was slit.⁶⁰

6.9 Impunity

Impunity among the security forces remains a serious problem. The US Department has also stated:

“Since April 1995, at least several hundred persons have been killed extra-judicially by the security forces or have disappeared after being taken into custody.... In the vast majority of cases....the government has not identified those responsible and brought them to justice. In the case of torture so far no one has been convicted. Large numbers of security force personnel identified as involved in disappearances have not been charged”.⁶¹

⁵⁶ Report of Special Rapporteur - E/CN.4/2001/9/Add.1

⁵⁷ US State Department Country Report 2000 op.cit.

⁵⁸ Report of Special Rapporteur - 17 January 2001 - E/CN.4/2001/9/Add.1

⁵⁹ Report of Special Rapporteur - 11 January 2001 - E/CN.4/2001/9

⁶⁰ BBC – *Sri Lanka's torture shame*, 26 June 2001

⁶¹ US State Department report 2000 op.cit.

The UN Special Rapporteur on Violence against Women reported in January 2001 that certain armed groups are allowed to operate with considerable impunity in the north and the east as they are allies of the government in the conduct of the war.⁶² The UN Special Rapporteur on Torture, Sir Nigel Rodley, has observed that although the Sri Lankan government has commenced investigations, it remained evident that more prosecutions and convictions will be required in order to significantly affect the problem of impunity. He also stated that security personnel responsible for injury leading to compensation should be removed from office.⁶³

Following a visit to Sri Lanka in October 1999, the UN Working Group on Involuntary Disappearances said as follows:

“Although a considerable number of criminal investigations have been initiated in relation to disappearances which occurred some ten years ago, only very few of the suspected perpetrators have actually been convicted, and some of them have even been promoted. Many families, therefore, rightly feel that justice has not yet been done to them. Non-governmental organizations also rightly claim that the present government has not done enough to investigate disappearances, which occurred after it took office and to prevent disappearances in the future.

“Whereas disappearances under the former Government were investigated by four independent Presidential Commissions of Inquiry whose findings in principle were made available to the public, the more recent cases were only investigated by a non-independent and confidential Board within the Ministry of Defence. The Human Rights Commission, which in principle could play an important role in investigating and preventing disappearances, seems to lack the necessary authority, political and financial support to carry out this task in an efficient manner.”

The Working Group recommended that the government should speed up its efforts to bring the perpetrators of enforced disappearances, whether under the former or the present government, to justice. It also recommended that the Attorney-General or another independent authority should be empowered to investigate and indict suspected perpetrators of enforced disappearances irrespective of the outcome of investigations by the police.⁶⁴ No independent investigations have been initiated, but a fourth police team began enquiries in September 2001 into the disappearances in Jaffna.

A number of laws, including the PTA, the Public Security Ordinance and the Indemnity Act of 1982 grant immunity to state officers and the security forces. These laws continue to remain in force, despite concerns expressed by local and international human rights agencies.

7. Violations by the LTTE

The LTTE has committed human rights violations in the territory it controls against members of the Tamil community and has launched attacks in southern Sri Lanka which

⁶² Report of the Special Rapporteur - E/CN.4/2001/73

⁶³ Report of the Special Rapporteur - E/CN.4/2001/66

⁶⁴ Visit report of the Working Group op.cit. E/CN.4/2000/64/Add.1

have affected the civilian population. The US State Department has stated that the LTTE regularly committed extra-judicial executions, including killing prisoners taken on the battlefield, and was also responsible for disappearances, torture, arbitrary arrest, detentions and extortion.⁶⁵ The Tigers are suspected to have been behind a number of assassinations, including the killing of Sri Lankan President Ranasinghe Premadasa in May 1993. The LTTE launched an attack on the Colombo airport in July 2001, damaging or destroying military and civilian aircraft.⁶⁶

In October 2001, Amnesty International urged the LTTE to abide by the commitments made in May 1998 to the UN Secretary General's Special Representative for Children and Armed Conflict, pledging not to use children under age of 18 in combat and not to recruit anyone under the age of 17.⁶⁷ Amnesty's concern followed complaints of large-scale recruitment of children by the LTTE in the Eastern Province of Sri Lanka.

8. Right to freedom of movement

The European Union expressed concern in November 2000 over restrictions on the right of the Tamil community to the freedom of movement within Sri Lanka. Tamils are required to obtain permits from the authorities or the security forces to travel to and from certain parts of the country, as detailed below. The Sri Lankan Constitution guarantees freedom of movement and there is no legal basis for the demand to obtain travel permits.

8.1 Travel to and from Jaffna

Tamils travelling to the northern Jaffna peninsula must obtain a permit from the Defence Ministry. The granting of permits may take up to three months. The names of the people granted permission to travel by air or sea are published in Tamil newspapers. This requirement has created considerable problems for Tamil residents abroad who visit relatives in the north and wish to return within a limited time. As a result of the restriction, there were 4,000 people in Trincomalee in September 2001, registered with the regional secretariat, waiting to travel to Jaffna. A further 7,000 were waiting in Jaffna to travel to southern areas.⁶⁸ Regarding the situation in Jaffna, the Colombo-based Consortium of Humanitarian NGOs has stated as follows:

“There were considerable constraints on freedom of movement in the peninsula, which can be divided into three areas from a military standpoint: security zones, cleared areas and uncleared areas.⁶⁹ Civilian movement into security zones was prohibited. Travel between cleared areas and uncleared areas was permitted during the day, but was subject to intense security screening at checkpoints that are in some places located only 100 metres apart. A night-time curfew was imposed from 9pm to 6am, and people returned home early to arrive before dark, having to pass through many checkpoints on the way.

⁶⁵ US State Department Country Report 2000 op.cit.

⁶⁶ *Sri Lanka Monitor* July 2001

⁶⁷ Amnesty International - ASA 37/013/2001 dated 11 October 2001

⁶⁸ *Sri Lanka Monitor* September 2001

⁶⁹ ‘Uncleared areas’ refer to LTTE-controlled areas and ‘cleared areas’ are zones captured by the Army.

“In addition, travel into and out of Jaffna was restricted. First, people had to get security clearance before travelling, and then - in the absence of a landroute to the south - further constraints resulted from a severe shortage of air and sea transport facilities. Both the government forces and the LTTE used the requirement of security clearance to regulate the movement of people.”⁷⁰

The procedure to obtain a travel permit is highly bureaucratic and lengthy. In Jaffna, a travel permit application form costs Rs 10 at the Army’s Civil Administration Office (CAO). There are only two CAOs in Jaffna - one at Point Pedro in north-eastern Vadamaratchy and the other in Jaffna town. Three copies of the photograph of the applicant certified by the *Grama Sevaka* (Village Headman) should be attached to three copies of the application form, which in turn must be attested by the *Pradeshiya Sabha* (regional council) office of the area. The *Pradeshiya Sabha* retains one copy.

The applicant must take the other two copies to the Army camp in the area to be certified by the officer-in-charge of the camp. The camp retains the second copy. The third copy must then be handed to the CAO. After the CAO issues a permit, a ticket to travel by ship to Trincomalee may be obtained at the office of the *Pradeshiya Sabha*. Local people say that this procedure may take weeks and sometimes months.⁷¹

The LTTE's targeting of ships in the north-eastern Mullaitivu sea and the blockade of the Sri Lankan Navy in *Operation Varuna Kirana* (Coloured Rays) have made travel by sea to and from Jaffna, extremely dangerous for civilians. The LTTE attack on the Colombo airport and the practice of Sri Lankan Airforce planes flying close to civilian aircraft have also made air travel unsafe.

8.2 Travel to and from the Vanni

Permits must be obtained from the LTTE in order to leave the northern Vanni region. This also may cause considerable delay. The LTTE rarely permits young men and women out of the areas it controls. People entering the Vanni area, which is under the control of the LTTE, must obtain permits. Before July 2001, such permits could be obtained from the Army headquarters in the border town of Vavuniya. In July 2001, the government ordered that travel permits to the Vanni must be obtained from the Defence Ministry in Colombo. MPs condemned the government measure as a further restriction of the people's right to freedom of movement.⁷²

There are currently over 20,000 people in refugee camps in the Army-held border town of Vavuniya, most of whom, arrived from the LTTE-controlled Vanni. Many of them wish to go to southern parts of Sri Lanka. Although the camps are called ‘welfare centres’, they are in reality detention centres. The security forces obtain a signed statement, without any legal basis, from those entering the camps, that they are doing so

⁷⁰ Consortium of Humanitarian NGOs - *Internally displaced persons and returnees from India* in Sri Lanka: State of human rights 1998 - Law and Society Trust, page 245

⁷¹ *Sri Lanka Monitor* December 2000

⁷² *Sri Lanka Monitor* July 2001

at their own free will. Once a person enters a camp, he/she effectively becomes a prisoner. If a person wishes to return to the Vanni, he/she must obtain a permit from the security forces.

Some categories of persons, such as those who have relatives living as permanent residents in Vavuniya, those seeking medical treatment, students proceeding for higher studies, public servants, persons appearing for visa interviews, people proceeding for their weddings or permanent residents of the south may be permitted to leave.⁷³ These categories of people must establish the purpose of visiting southern Sri Lanka by producing the relevant documents. For example, those needing medical treatment must have a certificate from the hospital in the area from where they arrive. If any other person in the camps wants to travel to southern Sri Lanka, he/she must apply to the security forces, and this must be backed by a surety living in the southern area where he/she intends to visit. The security forces would check on the surety through the police station in that area. The application is checked by a committee consisting of representatives from the Army, police and the security force CAO in Vavuniya. This procedure can take months and in the end permission may be refused.

8.3 Government regulations

The Sri Lankan government has introduced a number of measures restricting freedom of movement. The restrictions, which were imposed under ER, have now been re-introduced under the PTA. President Chandrika Kumaratunge made regulations under the PTA on 20 July 2001, establishing Prohibited Zones.⁷⁴ The Territorial Waters⁷⁵ extending from Hambantota in the south, through Trincomalee and Jaffna, to Puttalam in the west, encompassing the entire coast of the North-East Province, is a Prohibited Zone. No person in any vessel or in any other manner can enter the zone without written permission from a Competent Authority appointed under the regulations to exercise certain powers. This means that fishermen in the north-east, who have undergone years of suffering because of restrictions, must have special permits to carry on their occupation.

The regulations say that a certificate issued by the Competent Authority to the effect that any person entered the Prohibited Zone, 'shall be admissible and shall be prima facie evidence of the facts stated therein'. This means that charges can be brought without any independent evidence. The regulation also says that 'no indemnity or any other payment shall be payable under any policy of insurance, in respect of any death, injury or damage caused in the Prohibited Zone'.

President Chandrika has also established a Restricted Zone under the PTA.⁷⁶ The zone comprises the sea area and coastline extending between Mutuwal and Wellawatte suburbs in Colombo, including the Colombo harbour. These regulations also contain provisions

⁷³ Law & Society Trust - *State of Human Rights 1998* op.cit. page 247

⁷⁴ Prevention of Terrorism (Prohibited Zone) Regulations No 8 of 2001 - Government Gazette No 1193/31 of 21 July 2001

⁷⁵ Territorial Waters extend 12 nautical miles from the coast; 1 nautical mile = 1,852 metres

⁷⁶ Prevention of Terrorism (Restricted Zone) Regulations No 7 of 2001 - Government Gazette No 1193/31 of 21 July 2001

similar to those relating to the Prohibited Zone. On 4 July, the President declared all the 25 administrative districts of Sri Lanka as Security Areas under the PTA declaring that there is reasonable apprehension of organized violence.⁷⁷

The President also specified a High Security Zone in central Colombo, including the western coastline extending from the Colombo port to the bridge in Wellawatte suburb. The regulations prevent entry of heavy vehicles into the zone. These regulations also provide for admission as prima facie evidence in a court, matters stated in a certificate issued by the Competent Authority.⁷⁸

9. Monitoring refugee returns

The foreign governments returning refugees to Sri Lanka have failed to take adequate measures to ensure their safety. No effective procedure has been established for receiving, advising or monitoring repatriated refugees.

UNHCR undertakes “passive monitoring” of rejected Sri Lankan asylum seekers returned from Switzerland. This means that UNHCR does not undertake active monitoring of all cases of return, but intervenes where it is notified of any problem. UNHCR says that it informally assists governments of Denmark and Netherlands, at the latter's requests, to check on rejected asylum seekers covered by the bilateral agreements. UNHCR has also indicated that it receives information regarding returnees from Norway.

NGOs have pointed out that the island-wide insecurity remained chronic and argued that the south of Sri Lanka did not constitute an internal safe flight alternative, and that without active and long-term monitoring – as opposed to passive and short-term monitoring – the security of returnees could not be assured.⁷⁹ The situation continues to remain volatile. Many Tamils in Colombo and surrounding areas were rounded-up by security forces after the 24 July 2001 attack by the LTTE on Colombo (Katunayake) airport, where asylum seekers are returned. Cordon and search operations and arrests continue in the capital and other areas of southern Sri Lanka.

10 Manner of removal

According to the Home Office, 470 Sri Lankans were removed from Britain after exhausting all legal means of appeal.⁸⁰ Removals of refugees to Sri Lanka from other nations sometimes take place before the procedure provided by law is completed. Two Tamil asylum seekers in the North Rhine-Westphalia region of Germany were deported on 7 October 2000. They were arrested in Colombo on arrival and forced to spend two weeks in detention, where they allegedly suffered torture. The decision on their application by the Petitions Committee of the regional parliament in Germany had been

⁷⁷ Order under Section 2 (3) (ii) of the PTA - Government Gazette No 1191/12 of 4 July 2001

⁷⁸ Prevention of Terrorism (High Security Zones) Regulations No 3 of 2001 - Government Gazette No 1191/19 of 6 July 2001

⁷⁹ Christopher McDowell op.cit.

⁸⁰ Lord Rooker, Home Office Minister - Removals between 1990 and 2000, Written answers to questions, House of Lords Hansard 13 December 2001 Column WA227

expected on 17 October. They were deported despite the assurance of the authorities on 4 October that they would await the decision of the Petitions Committee.⁸¹

The British Home Office removed a Tamil asylum seeker Arasaratnam Kumarakuruparan on 24 April 2001, after a human rights appeal had been submitted. Following an application for injunction, the High Court ordered the Secretary of State to return Mr Kumarakuruparan to Britain. He was returned to the UK on 25 April.

Community organisations informed the Refugee Council in November 2001, that the Home Office has begun issuing notices to Sri Lankan asylum seekers whose applications have been rejected, to go to the Sri Lankan High Commission in London to obtain a travel document in order to be deported to Sri Lanka. In November 2001, the Home Office detained an asylum seeker for refusing to go to the Sri Lankan High Commission, while admitting that further representations on behalf of the refugee are being considered. This procedure seriously compromises the confidentiality of the case and the safety of the refugee. Such detentions may have the effect of denying or making difficult, appeals under human rights provisions.

11. Problems of returnees

Human rights NGOs and lawyers have identified the following problems after interviewing returned refugees:⁸²

- 1) All Sri Lankans must produce the National Identity Card (NIC) on demand by the security forces. Those without NICs may be arrested. The security forces sometimes confiscate NICs or the identity documents issued by the deporting country, at the airport.

The travel documents of 20 Tamil asylum seekers, deported from Germany and arriving in Sri Lanka on 16 March 2000, were confiscated. Two of them were arrested at the airport, despite the protest of the German Border Police who accompanied them. Varadakumar Varadarajah was produced before the Negombo magistrate on 17 March and was released on bail. He went to stay with relatives in Chilaw, north of Colombo, but the police refused to register his name. Another German deportee Visvanathan Paramasivam, was also released on bail on 17 March. He was arrested again in the Kollupitiya suburb of Colombo. The police refused to accept the court documents relating to bail and detained him for three days.⁸³

- 2) Tamils in Colombo and other urban centres were required to possess proof of police registration under Emergency regulations (See Annex V - Police circular dated 22 February 1999). The regulations required only the householder to register with the police, providing details of residents in the house. But in practice, the police

⁸¹ *Migration News Sheet*, November 2000

⁸² Sri Lanka Work Group Netherlands - *The situation of Tamils in Colombo*, November 1999; Forum for Human Dignity (Sri Lanka) - Report of 18 February 2000

⁸³ *Sri Lanka Monitor*, March 2000

demanded proof of registration from all Tamils. Although the regulations had general application, they were implemented only in the case of Tamils. Many Tamils in possession of the NICs and police registration have been arrested. Despite a prohibition by the Committee of Inquiry into Undue Arrest and Harassment (CIUAH), the security forces continued to demand proof of police registration.⁸⁴

The regulations requiring police registration became void when the state of Emergency lapsed in July 2001. However, Colombo human rights agencies have expressed concern that the police continue to demand proof of police registration without any legal basis.

- 3) Deported Tamils arriving in Colombo come under pressure from security forces to return to their home areas in the north-east, where fighting continues. This creates huge difficulties for the deportees. They cannot stay in Colombo in order to obtain NICs or other documents and they cannot travel to or within the north-east without these documents.
- 4) Many Tamils returned from other countries have been taken into custody at the airport under ER, the PTA or the Immigrants and Emigrants Act. Arrests have been also made after entry, while staying in Colombo.
- 5) Bail is disallowed under the PTA. Under ER, bail was allowed only after three months. As money must be paid or a 'surety' had to be found for bail, detainees were not able to obtain bail, if they did not have relatives in Colombo willing to pay the amount. Under an amendment to the Immigrants and Emigrants Act, in June 1998, bail can be disallowed, whereas bail is available even to the accused in murder cases. The Act says that 'notwithstanding any provision in any other law, every offence under the prescribed section of this Act shall be non-bailable and no person accused of such an offence shall in any circumstance be admitted to bail'.⁸⁵

The amendment also disallows suspension of sentence or conditional release, has increased punishment by a huge margin and provides for mandatory punishment, thus removing the discretion of courts, against the concept of a fair trial. Before July 1998, the punishment for an offence under the Act was a fine of Rs 5,000-Rs 50,000 and/or imprisonment of 1-5 years. The amendment increased the fine to Rs 50,000-Rs 200,000.⁸⁶

According to the British Home Office, the amendment was introduced in response to pressure from European nations who want to clamp down on human smuggling. However asylum seekers have been targeted under the Act. Between 13 January and 23 March 2001, 149 people were detained under the Immigrants and Emigrants Act, on arrival at the Colombo airport, including Tamil asylum seekers deported from

⁸⁴ CIUAH is a ministerial committee appointed to enquire into allegations of harassment of Tamils.

⁸⁵ Section 47 of the Immigrants and Emigrants (Amendment) Act No 42 of 1998

⁸⁶ Section 2 of the Immigrants and Emigrants (Amendment) Act No 42 of 1998

other countries.⁸⁷ In September 2001, 190 people remained in detention at the Negombo prison under the Act without bail.

Balakrishnan Thanarajah, who was deported from Britain on 8 April 2001, was arrested at the airport. The police have stated in their report to the Negombo magistrate that he was interrogated, fingerprinted and his statement recorded. The police had also requested reports about him from the Crime Records Division (CRD), Internal Intelligence Directorate (IID) and the Terrorist Investigation Division (TID).

Ratheevan Krishnasuriyan was deported from Norway and arrested at Katunayake airport by the IID on 5 February 2001. He was handed over to the Criminal Investigation Department (CID) and fingerprinted. The CID sought reports from the CRD, IID and TID. He was released on Rs 50,000 (£400) bail and ordered to appear again at the Negombo court. Mahalingam Chandramohan, deported from Germany, was handed over by immigration officers at Katunayake airport to the CID on 21 February 2001. He was released on 30 March 2001 on Rs 50,000 bail and ordered to appear again in Negombo court.

Thulasi Gnanakrishnan and her two children, deported from Canada were arrested at the Colombo airport on 28 February 2000. She was released on bail and ordered to appear in court on 30 May 2000, but the police denied her permission to stay in Colombo. The Canadian High Commission in Colombo told her lawyers that she was detained overnight at the police post in the airport to allow time for the police to 'confirm their identity' and that 'she was free to go about her business in Sri Lanka'.⁸⁸

Lawyers have stated that her identity certificate had been issued by the Sri Lankan High Commission in Ottawa and in addition Ms Gnanakrishnan had an old Sri Lankan passport. They also said that Slave Island suburb police in Colombo had denied her permission to stay in Colombo. According to Sri Lankan newspaper *Sunday Leader*, the family was interrogated by the security forces for over four hours and harshly treated.⁸⁹

- 6) Security forces often demand bribes. People arrested and detained have been released after relatives paid large sums to the authorities. Refugees returning from foreign countries are suspected of having large amounts of money and this may lead to their arrest. It is unclear as to what happens to the police records of arrest and detention after detainees are released on paying bribes.
- 7) Returning refugees are suspected of raising funds for the LTTE, which is now a banned organisation in Sri Lanka, India, Britain, Canada and the US. The LTTE was banned in January 1998 in Sri Lanka under Emergency regulations. The state of Emergency lapsed in July 2001. President Chandrika introduced regulations on 4 July

⁸⁷ List provided by Attorney-at-Law Ramiah Shadagopan dated 23 July 2001

⁸⁸ *Sri Lanka Monitor* March 2000

⁸⁹ DBS Jeyaraj - *The Sunday Leader* (Sri Lanka), 5 March 2000

2001 under the PTA banning the LTTE.⁹⁰ These regulations specifically provide that contributing or collecting funds for a proscribed organisation is an offence punishable by imprisonment of 7 to 15 years.

Kathiresan Sivalingam was arrested by the IID at the airport on 18 June 2001, after he was deported from Norway, and handed over to the CID. He was interrogated, fingerprinted and information was sought about him from other agencies. The CID, in their report to the Negombo Magistrate say that information has been received from the Embassy of Sri Lanka in Norway about Mr Sivalingam that ‘assistance has been given regarding Tamil terrorist activities’. But the court found no evidence to substantiate the allegation and he was released on 22 June 2001.

- 8) Prison conditions are extremely poor and Amnesty International has stated that torture occurs regularly, particularly at police stations and military camps. The UN Special Rapporteur on Torture has recorded the torture of at least two returned asylum seekers. Muthuthambi Vanitha, who was deported from France in October 1998⁹¹ and Thambirajah Kamalathan, who was returned from Senegal in February 1998⁹² were arrested and suffered severe torture at the hands of the security forces. Mr Kamalathan was assaulted with a rod at Colombo's Pettah police station. Chilli powder was rubbed into his eyes and his genitals were squeezed. After two or three days he had difficulty walking. One of his legs was apparently swollen below the knee.⁹³

Ratnam Suresh was deported from Sweden in March 1994 and disappeared after arrival in Colombo. In February 1997, the ICRC confirmed that he was among the 21 Tamils killed in police custody.⁹⁴ Most of them had been murdered by strangulation at the police Special Task Force headquarters in Colombo. The case relating to these killings was abandoned in March 1997.⁹⁵

- 9) People with scars on their bodies are vulnerable, as security forces suspect that they are members of the LTTE and sustained wounds in fighting.

Regarding scars, UNHCR says as follows:

“UNHCR is aware that young returning Tamils in certain circumstances are potentially open to risk upon return. This risk may be triggered by suspicions (on the part of security forces) founded on various factual elements such as, the lack of proper authorisation for residence or travel, the fact that the individual concerned is a young Tamil from an “uncleared” area or the fact that the person has close family members who are or have been involved with the LTTE.

⁹⁰ Prevention of Terrorism (Temporary Provisions) Regulations No 1 of 2001 - Government gazette No 1191/12 of 4 July 2001

⁹¹ *Sri Lanka Monitor*, December 1998

⁹² Amnesty International – Urgent Action 6 August 1998 ASA 37/19/98

⁹³ Amnesty International - Urgent Action 6 August 1998 ASA 37/19/98 and 28 August 1998 ASA 37/21/98

⁹⁴ ICRC letter dated 11 February 1997 to the German Red Cross

⁹⁵ Amnesty International - Annual Report 1996; *Sri Lanka Monitor* March 1997

“In UNHCR's view the presence of torture-related scars on the body of a returnee should be a relevant consideration in assessing the likelihood of danger upon the return of Sri Lankan Tamil asylum seekers. Where such scars are related to human rights abuses and they are discovered by security personnel, they could draw adverse attention to the individual and thus enhance the likelihood of danger. While every case should be assessed on its own merits, UNHCR would reiterate its view that special care must be taken in relation to the return of failed asylum seekers to Sri Lanka.”⁹⁶

A large number of returnees have been arrested on arrival or taken into custody while staying in Colombo. Most of them have been granted bail but some remain in custody under the Immigrants and Emigrants Act, which falls below international standards. The risk of returned asylum seekers deported from abroad being arrested in Colombo and other southern areas, remains. The security forces constantly raid lodges where returned asylum seekers reside. They carry out search operations almost daily in Colombo and other southern areas, particularly at nights.

12. UK Country Assessments

The British Home Office has made the following statements in asylum refusal and other letters:

- a) There has been a general improvement in Sri Lanka in the human rights situation.
- b) The Secretary of State holds the view that the general improvement in the human rights situation since the People's Alliance government came to power continues.⁹⁷
- c) The President herself is firmly resolved to improve the country's human rights record.
- d) The government of Sri Lanka has taken genuine steps to address this issue and that it continues to respond positively to international concerns over reported human rights violations.
- e) It is safe to return failed asylum seekers to Colombo or its surrounding areas.
- f) The Secretary of State is satisfied that the government of Sri Lanka remains committed to finding a peaceful solution to end the hostility.
- g) Arrested Tamils are generally well treated by the police and security forces. Arrests are legitimate and lawful action on the part of the security forces.

However, the Home Office's own Sri Lanka Country Assessment which lays down guidelines for case workers who make asylum decisions, contains the following statements:⁹⁸

- 5.1.1 The on-going war continued to be accompanied by serious human rights abuses committed by the security forces. These include extra-judicial

⁹⁶ Letter of UNHCR dated 2 October 2001 to a legal firm in London

⁹⁷ The People's Alliance led by President Chandrika came to power in August 1994.

⁹⁸ UK Home Office - *Sri Lanka Assessment April 2001*

executions, the killing of prisoners captured in the battlefield, disappearances, torture, and mass arrests and detentions. Impunity for those responsible for human rights abuses remains a serious problem.

- 5.1.4 In most cases, however, no progress was made, or there was no investigation or prosecution at all, giving the appearance of impunity for those responsible for human rights violations.
- 5.1.5 Pro-government Tamil militants committed extra-judicial executions, and were responsible for disappearances, torture, detentions, extortion and forced conscription.
- 5.1.6 The LTTE have also been responsible for human rights violations, including attacks on civilians, hostage taking, extra-judicial executions, torture, arrests and disappearances.

It is clear that there are contradictions here. Furthermore, the Home Office refusal letters state that the Tamils are not a persecuted group. The Medical Foundation for the Care of Torture Victims has pointed out that it is the Tamils who, if suspected of LTTE involvement, are likely to be detained and tortured. It is clear how easy it is for Tamils to be identified as having links to the LTTE, either through being identified by other detainees under threat of ill-treatment, or by having scars that are taken as evidence of fighting for the LTTE.⁹⁹

The Home Office also asserts that Tamil civilians have nothing to fear from the authorities. The Medical Foundation says that this statement denies the experience of its clients, who when involved in routine actions and inquiries made by the Sri Lankan authorities, found that they had much to fear in the form of arrest and torture.

The Home Office also claims that the Sri Lankan government has the right to take whatever measures it considers reasonable to defend itself, and to maintain law and order, in the face of the continuing threat posed by the LTTE. The Medical Foundation says that such a claim is morally and legally wrong and points out that the test of what a country has the right to do to combat what it perceives as a threat is whether it is in accordance with international law, not whether the state concerned considers the action reasonable. Torture is illegal under international law, accepted by Sri Lanka, and is also unlawful under its own domestic legislation.

13. The European Union

A High Level Working Group (HLWG) was appointed, following a European Union (EU) decision on 6 December 1998, to develop action plans on freedom, security and asylum, including economic co-operation with the country of refugee origin, assistance in the reception of displaced people in the region of origin, safety of returning refugees and internal settlement alternatives. The HLWG has produced action plans on six major

⁹⁹ Medical Foundation, June 2000 op.cit.

refugee producing or transit countries.¹⁰⁰ The focus of the plans has been on controlling the flow of refugees rather than on effective long-term solutions to the serious human rights problems in those regions.

The Action Plan for Sri Lanka recognized that a 'significant proportion of the primary cause of migratory flows stems ultimately from the continuing conflict, to which no military or political settlement appears likely in the near future'. The Action Plan also pointed out that the 'war has led to human rights abuses inflicted by both sides and the economic deprivation and poverty in the areas most affected'.

13.1 Human rights

The Action Plan said that the EU would continue to raise human rights issues with the Sri Lankan government and through appropriate channels, with the LTTE. It is clear from what has already been discussed that both sides to the conflict in Sri Lanka continue to violate human rights with impunity. The Sri Lankan government measures are totally inadequate and have failed to make the impact required for reaching international standards in human rights observance.

13.2 The Human Rights Commission

The Action Plan stated that the EU would approach the Sri Lankan authorities in order to make the Human Rights Commission (HRC) a truly independent body and to invest it with all-encompassing investigative powers. The HRC still has thousands of pending cases, because of its inability or unwillingness to utilize the powers vested to it under the law. Amnesty International says that the HRC has been slow to make a significant impact on the human rights situation in the country and in addition measuring any impact of the HRC's work has been made more difficult due to lack of transparency. None of the annual reports of the HRC, which by law have to be submitted to Parliament, have been made public.

HRC officers visit places of detention, but Amnesty International has questioned whether such infrequent visits can act as an effective deterrent against torture. In relation to remedying incidents of torture, the HRC has not made any recommendation for compensation to victims or any action to be initiated against perpetrators.¹⁰¹

13.3 Chemmani mass graves

The Action Plan also envisaged persuading Sri Lankan authorities to pass the Chemmani graves investigation to an impartial body such as the HRC for clarification without delay. The Sri Lankan government has not taken any such action. It has also failed to appoint an independent commission to investigate disappearances after it came to power in 1994 as recommended by the UN Working Group on Disappearances. Amnesty International

¹⁰⁰ The six countries are Morocco, Afghanistan, Somalia, Iraq, Sri Lanka and Albania and neighbouring countries.

¹⁰¹ Amnesty International comments on HLWG Action Plan for Sri Lanka op.cit.

recommended to the EU to push for such a probe and for effective investigation and prosecution into the disappearance and murder of 15 people whose remains were recovered in Chemmani in 1999.¹⁰² As pointed out earlier, in September 2001, a ‘fourth non-independent’ police team began enquiries in Jaffna into the disappearances.

13.4 Repeal of the PTA

The Action Plan also stated that the EU would discuss with Sri Lankan authorities the repeal of those provisions of the PTA and ER which appear to give government officials far-reaching exemptions from prosecution. In May 2000, the government introduced new ER, granting more powers and immunity to state officers and the security forces, and removing some of the safeguards found in the earlier regulations. Amnesty International has said that the regulations had the overall effect of eroding safeguards to protect the rights of the people deprived of their liberty and that it was clear that such wide-ranging powers given to security forces facilitate torture and disappearances.¹⁰³ Although ER lapsed in July 2001, the PTA remains in force. The President has introduced numerous regulations under the Act and has invoked Part III of the Public Security Ordinance, in order to keep intact her powers and the powers to security forces.

13.5 Reduction of poverty

The Action Plan further said that the EU would develop partnership to ensure an effective contribution through development co-operation to the reduction of poverty. The policy of the Sri Lankan government in relation to the north-east of Sri Lanka has increased poverty in the region. The government has imposed an economic blockade on the Northern Province and parts of the Eastern Province and the military has introduced its own restrictions, including on food, medicines and medical equipment, fuel, fertiliser and educational equipment. The blockade has inflicted severe hardship on the people and has affected the health of the population, industries, education, fishing and infrastructure. The World Bank says that the health services have deteriorated in conflict areas, border villages and welfare camps.¹⁰⁴ (See Annex VI for articles banned by the government, earlier under ER and now under the PTA¹⁰⁵ and Annex VII for articles restricted by the Army at Vavuniya).

The EU drew attention in December 2000 to the extreme social, moral and physical precariousness of the displaced people and urged the government to do everything in its power to improve their lot.¹⁰⁶ This is an indication that the Sri Lankan government has

¹⁰² *ibid.*

¹⁰³ *ibid.*

¹⁰⁴ The World Bank - *Sri Lanka: Recapturing missed opportunities* 16 June 2000. For more information see also report of Save the Children (UK) titled *Children affected by armed conflict in north and east Sri Lanka 1998* and *Sri Lanka Monitor* at www.gn.apc.org/brcsproject

¹⁰⁵ Notification of the Defence Secretary dated 2 August 2001 [Government gazette No 1195/18 of 3 August 2001] under Prevention of Terrorism (Restricted Articles) Regulations No 9 dated 20 July 2001 [Government gazette No 1193/31 of 21 July 2001]

¹⁰⁶ EU press release - *Sri Lanka: Declaration at the World Bank Development Forum*, 18 December 2000

failed to provide effective support to the internally displaced, but its measures have had the effect of imposing more hardship on them.

13.6 Arms trade

As a medium and long-term measure the Action Plan envisaged that the EU would continue to look for ways to find a political solution to the conflict. However, some of the actions of the EU nations seem to promote conflict rather than provide a solution.

A specific example of this is the continued involvement in the arms trade. Countries in the European Union supply arms to Sri Lanka thus contributing in a substantial manner to the armed conflict and as a consequence to human rights violations in the context of war, to internal displacement and refugee flight abroad. In 1997, the British government issued 67 licences for military equipment, which may have included small arms, combat aircraft and large calibre weapons such as mortars. Twenty licenses are for supply of electronic equipment specially designed for military use. The Campaign Against Arms Trade (CAAT) states that Britain should not be permitting the export of arms to Sri Lanka, which has a very poor human rights record.¹⁰⁷ Since 1997, there has been a steep rise in Sri Lankan refugee applications in Britain.

A British firm sold 1,000 shoulder-launched rockets with fuel-air warheads, in June 2001 to Sri Lanka. These weapons can have a devastating impact on the body. British Liberal Democratic Party Foreign Affairs spokesman Menzies Campbell said that the 'nature of these weapons is so dreadful that they ought to be governed by an international convention and banned'.¹⁰⁸ Sri Lankan MPs have expressed concern over the supply of such dangerous weapons to the island's security forces which are known to deliberately target civilians in Tamil areas.

13.7 Erosion of democracy

Whilst recognizing the issues, the failure of the EU to follow through has contributed to the ongoing situation in Sri Lanka. For example, the EU expressed concern in October 2000 over the violence at general elections and the misuse of government resources by the ruling party.¹⁰⁹ The EU Electoral Observer Mission has submitted 16 recommendations to the Sri Lankan government in order to guarantee greater transparency, which are yet to be implemented.¹¹⁰

In December 2000, the EU said that 'apart from the consequences of the ethnic conflict, which has been raging since 1983, shortcomings in government are also hampering the country's development'. The EU said it regrets and condemns the anomalies observed during the campaign and the violence that took part during voting, which threaten to

¹⁰⁷ Campaign Against Arms Trade – *The supply of UK military equipment to Sri Lanka*, November 1998

¹⁰⁸ *The Guardian* (London) - 23 November 2001

¹⁰⁹ Bulletin EU 10-2000 (en): 1.6.25

¹¹⁰ *Final report of the European Union's Observer Mission to Sri Lanka's October 10, 2000 Parliamentary Election*

weaken democracy.¹¹¹ In the run-up to general elections on 5 December 2001, more than fifty people were killed and police recorded over 2,000 violent incidents related to the elections, including attempted murder, arson, assault, intimidation and grievous injury. The leader of the EU election observer team called it “murder of democracy”.

13.8 Continuing violations

In December 2000, the EU expressed shock for the murder of young Tamil detainees in the rehabilitation camp of Bindunuwewa on 25 October 2000 while they were under the Sri Lankan authorities’ protection. The Union asked the Sri Lankan government to do its utmost to see that the murderers are arrested and brought to justice. The European Union also called upon the Sri Lankan government to identify and bring to justice those responsible for human rights violations in the country.¹¹² In the same month, international institutions and foreign nations participating in the Sri Lanka Development Forum in Paris declared that ‘social exclusion driven by ethnicity, language and religion, had resulted in reduced opportunities over decades and created the extreme tensions which drove the conflict, in the island’.¹¹³

But despite grave violations of human rights continuing for many years, effective action has not been taken by the EU, such as linking economic aid to promotion of human rights. In May 2000, after the LTTE captured the Elephant Pass camp, the Sri Lankan government announced that development work considered non-essential is suspended for a period of three months and the funds, if necessary, will be diverted towards the war effort.¹¹⁴ The government introduced a 4.5% National Security Levy (NSL) on all goods and services in 1995, which is a contribution to the war effort. In 2001, the tax rose to 7.5%.¹¹⁵ All organisations providing goods and services, including international agencies, are expected to pay this tax.

¹¹¹ EU press release at the World Bank Development Forum, 18 December 2000 op.cit.

¹¹² Bulletin EU 12-2000 (en): 1.6.22

¹¹³ World Bank - *Sri Lanka Development Forum focuses on peace and poverty*, 20 December 2000

¹¹⁴ *Sri Lanka Monitor Update: State of war*, May 2000

¹¹⁵ The Economist Intelligence Unit - *Sri Lanka: Country Report*, May 2001

14. Refugee Council observations and conclusions

14.1 It is clear that the human rights situation in Sri Lanka has not improved despite the claims of some governments. It is also evident that EU nations cannot guarantee that asylum seekers could be returned to Sri Lanka in safety and dignity. The EU has had no success in its objectives as set out in the High Level Working Group Action Plan for Sri Lanka. EU governments have consistently failed to link human rights with economic and foreign policies. If there is to be any improvement in the situation, the EU needs to ensure that Sri Lanka makes some headway in implementing the recommendations of the UN Treaty Monitoring Bodies and international human rights agencies such as Amnesty International and Human Rights Watch.

14.2 In light of grave violations of human rights, particularly non-derogable rights such as freedom from torture and the right to life, EU nations should refrain from contributing to the escalation of the conflict. They should review arms supply to Sri Lanka, particularly dangerous weapons that have been the cause of international concern.

14.3 The objectives set out in the HLWG Action Plan are inter-linked and the EU nations must work harder to achieve important objectives and ensure an end to persecution. Special attention must be paid to the question of impunity, as pointed out by Amnesty International.¹¹⁶

14.4 Attention must also be paid to draconian legislation that is in force for more than twenty years, which fall short of international standards. It is an appalling state of affairs that EU nations have been behind the introduction of the 1998 amendment to the Immigrants and Emigrants Act, which also falls below international standards. Sri Lanka must be persuaded to repeal these laws or bring them in line with international standards as urged by the UN Human Rights Committee.

14.5 The EU nations must endeavour to ensure that practical measures are taken for good governance, transparency and the promotion of democratic institutions and provide more support to the re-establishment and promotion of the civil society and local institutions destroyed in the conflict.

14.6 It is difficult to imagine how refugees can be returned to a country during internal armed conflict, turmoil, grave violations of human rights and continuing persecution. If detention or return of asylum seekers is envisaged, EU nations must observe the 16 principles set out in the Refugee Council paper on refugee returns. (Annex VIII)

¹¹⁶ Amnesty International - *Sri Lanka: A human rights agenda for the new Prime Minister*, 18 December 2001 ASA 37/015/2001

14.7 The war may not be brought to an end without greater international involvement. The election of a new government in December 2001, may provide an opportunity for a negotiated peace. The recommendation made by the Refugee Council in 1997 is still relevant not only to Britain but to other nations as well:

“Should the UK government wish to affect the numbers of applications from Sri Lankan nationals, it should put its resources into aiding the facilitation of a ceasefire and talks between the Sri Lankan government and the LTTE. The only way of ensuring that asylum applications will decrease is to end the civil war and human rights violations - the cause of flight for over half a million Tamil refugees.”¹¹⁷

14.8 Concerns over movement are currently high on the international agenda and it is imperative that governments look at refugee situations holistically. In this light, the links between domestic refugee policy and international development are crucial. It is often the case that different departments of government follow incompatible agendas, in some instances even helping to exacerbate refugee-producing situations. The trend is for industrialised countries to seek to transfer responsibility of protection to developing nations. These need to be addressed, as those same countries are already hosting large number of refugees and many countries are crippled by debt payments, HIV/AIDS and terms of trade that do not enable them to diversify their economies.

14.9 The British government should give urgent consideration to establishing an independent body to produce country assessments, on the Canadian model. In the run-up to the 1999 legislation, there were many discussions between the Home Office and voluntary organisations with the view to establishing such a body. Unfortunately, no concrete proposals have been put forward by the government up to now.

¹¹⁷ British Refugee Council - Protection denied: Sri Lankan Tamils, the Home Office and the forgotten civil war, February 1997

Annex VIII

Refugee Council Paper on Returns Policy

The Principles to be observed when considering detention or removal of asylum seekers

- 1 There must be an absolute commitment to *non-refoulement*
- 2 In addition to the above, nobody should be returned to situations of generalised violence.
- 3 The rights of any child must be paramount - the UK should end its derogation from the Convention on the Rights of the Child.
- 4 Removal should only be carried out where the individual has been through a full asylum and human rights procedure, which is case specific and includes consideration of all compelling and compassionate circumstances.
- 6 People have had access to a full decision making process, including suspensive rights of appeal, with the benefit of quality legal advice and representation and with adequate interpreting.
- 7 People should not be removed following long periods of residence and employment.
- 8 People should not be returned with long term mental health problems, who are pregnant or for whom long-term medical care is not available in the country of origin.
- 9 Arrest and detention should only be used as a last resort, for the shortest possible time and immediately prior to removal. All other options such as reporting arrangements should be used in preference.
- 9 Children should never be detained.
- 10 If the government does decide to detain children with their families, they should never be placed in cells or other confined areas. Facilities should be available for their care and protection.
- 11 The Government is aware of a number of countries with whom re-admission agreements have not proved possible. In such cases special rules should be enacted to ensure that detention does not take place.

- 12 The government should enact Part III of the 1999 Asylum and Immigration Act to ensure that detainees (including those pending removal) have a right to bail with a presumption of liberty. They should ensure that detainees have access to quality legal advice and interpretation so that access to bail will be meaningful.
- 13 Voluntary repatriation programmes should be pursued only in the context of durable, humane and cost effective solutions. They should always offer the opportunity to "try and see" with the option of return to the UK.
- 14 All removals should respect the rights of individuals and be carried out in dignity and safety. They should also ensure confidentiality to the individual concerned and not draw attention to the fact that they are a returning asylum seeker.
- 15 All removals should allow the person time to gather their effects and settle their affairs.
- 16 High profile attempts to remove significant numbers of people en masse are not appropriate strategies.