

Sri Lankan Tamils, the Home Office and the forgotten civil war



PROTECTION DENIED



february 1997

the refugee council

of London, towards the House of
and the London City



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and the London City

Executive summary

Following concerns raised by a number of Sri Lankan refugee community organisations in the UK, a delegation from the Refugee Council visited Sri Lanka in December 1996. During this visit, the delegation travelled to Vavuniya, a town at the crossroads of government-controlled and LTTE-controlled territory; and Colombo, where they interviewed representatives from refugee and human rights organisations, as well as local government officials, lawyers and diplomats. *Protection denied* is based on the substance of that visit, as well as desk research carried out at the Refugee Council. It concludes that:

- While there has been a reduction in systematic human rights violations, particularly against the Sinhalese population, there continue to be grave human rights abuses, particularly against Tamils, which the government appears to be unwilling or unable to prevent.
- These human rights abuses have been carried out by both sides in the civil war. The actions of the Liberation Tigers of Tamil Eelam, in particular the bombing of innocent civilians in Colombo and the targeting of Tamils accused of treachery in the Jaffna Peninsula, are evidence of a continued disregard for fundamental human rights.
- The Sri Lankan government's attempts to promote human rights have been slow to change the cultural and institutional prejudices and practices which have resulted in continued patterns of abuse, particularly within the security forces.
- There is no longer a viable internal flight alternative for Tamils fleeing from persecution in the north of the country, most of whom have been caught between the two warring armies.
- The United Nations High Commissioner for Refugees should urgently review its position paper on the situation in Sri Lanka.
- Between 1991 and 1993, 95 per cent of all decisions on Sri Lankan applications for asylum in the UK were awards of Exceptional Leave to Remain. Between 1994 and 1996, 94 per cent of all decisions on Sri Lankan applications for asylum in the UK were refusals.
- The Home Office's assessment of the current situation in Sri Lanka has resulted in the high percentage of refused Sri Lankan asylum applications and should be urgently modified in the light of the findings of this report. At the very least, the use of Exceptional Leave to Remain for Sri Lankan applicants should be re-introduced.
- It should not be assumed that it is safe to return asylum seekers to Colombo, because of the continued existence of arbitrary arrest, detention without trial and torture.
- One worrying development has been the growth of the illegal transportation of asylum seekers, leaving them at the mercy of unscrupulous smugglers. The criminalisation of this process (visa requirements, carrier's liability) may have prejudiced European governments against taking a humanitarian stance towards asylum applicants.
- 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.

Protection denied: Sri Lankan Tamils, the Home Office and the forgotten war

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Front cover photo: Refugee reception centre on Mannar Island (Howard Davies, 1995, UNHCR)

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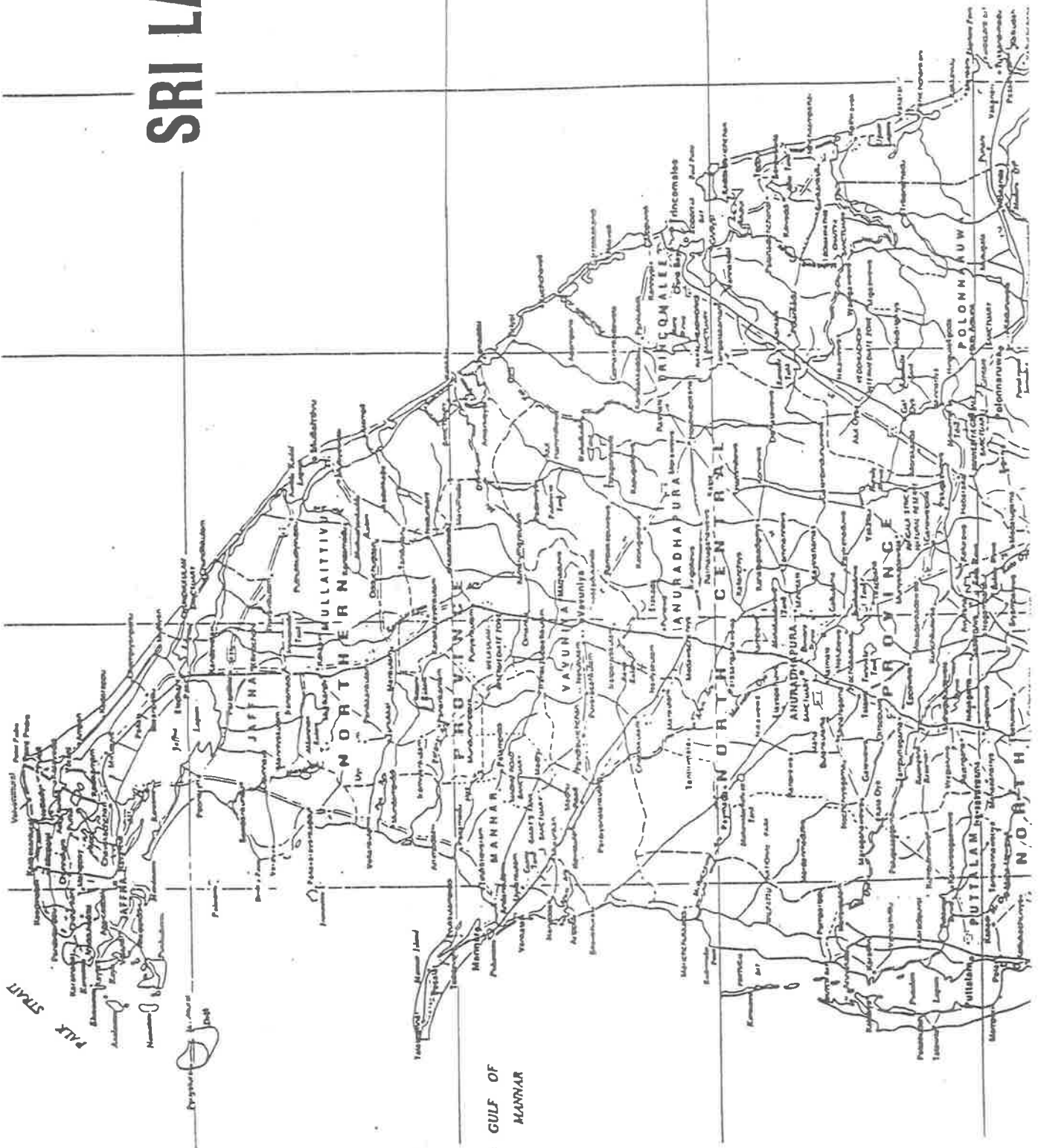
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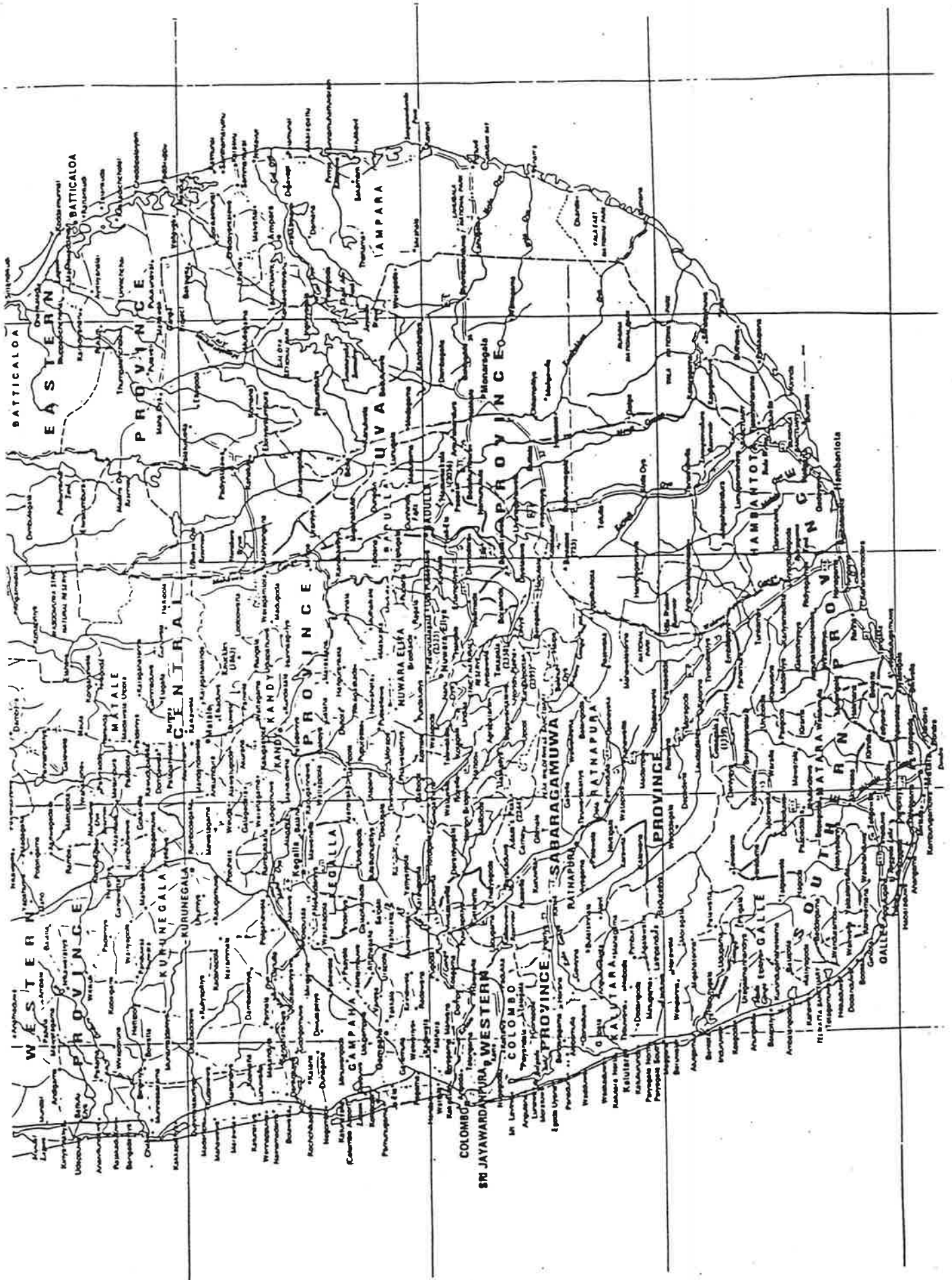
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SRI LANKA





1. Introduction

For almost fifteen years, a civil war waged between the predominantly Sinhalese government and increasingly militant Tamil secessionist guerrillas has ravaged Sri Lanka, described by many commentators as one of the most beautiful islands in the world. The impact on its people, moreover, has been catastrophic, with almost 10% of the population being displaced by the war.¹ For some of them, this has resulted in flight from the island to an uncertain and insecure life overseas, to refugee camps in southern India or the conundrums of asylum determination systems in the Europe. For others, it has meant repeated upheavals, fleeing from one conflict zone to another carrying with them their sole worldly possessions.

The election of the People's Alliance government in August 1994 symbolised the hopes of the electorate for an end to the hostilities and a cessation of the human rights abuses which had resulted, for example, in the disappearance or extrajudicial execution of tens of thousands of people in the previous decade.² For many refugees overseas, President Chandrika Bandaranaike Kumaratunge's election raised hopes of the fulfilment of a collective dream - that they might return to their homes free from the fear of persecution. On 25 May 1995, this dream was shattered with the attack by Liberation Tigers of Tamil Eelam (LTTE) guerrillas on naval vessels in Trincomalee harbour, an act which broke the ceasefire agreement which had been brokered only four months previously.

This heralded the start of Eelam War III, the third phase in the civil war, during which government troops have marched into the LTTE's former stronghold of the Jaffna Peninsula and a further 450,000 people have been displaced.³ Those who have been displaced during the war include 100,000 Muslims who were forcibly evicted by the LTTE from the north of the country in 1990. Despite international attempts to broker a deal between the two warring sides, there are few signs of a ceasefire. Indeed, the start of 1997 has seen renewed military engagements whose strategies appear to be based on the control of the civilian population.⁴ One result of this development has been that civilians find themselves in the firing line. A tragic earlier example of this was the slaughter of 65 displaced people and wounding of 150 others by an air force strike on a church and buildings in Navalay in early July 1995. Over 2,000 displaced people had taken sanctuary in the church.

1.1 The Refugee Council and Sri Lanka

Throughout the course of the civil war, the Refugee Council has been taking a keen interest in the welfare of the victims of the conflict. The organisation has supported Tamil refugee community organisations in establishing themselves in the UK. These organisations, in turn, have assisted thousands of Sri Lankan refugees to find a new life for themselves in this country. Several of them are also members of the Refugee Council. The Sri Lanka Project, which has been housed at the Refugee Council for the past nine years, has been internationally recognised for its dissemination of information about the conflict in Sri Lanka, particularly through its monthly publication, *The Sri Lanka Monitor*.

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- 1 Out of the current population of 17 million, 1.5 million people have been displaced by the war - 1 million of them internally displaced and half a million who have fled from the country overseas. (Sri Lanka Project, January 1997)
 - 2 Amnesty International, *"Sri Lanka: time for truth and justice"*, April 1995, p2.
 - 3 "The recent military offensive has added to the numbers of persons displaced and has displaced once again people who had been displaced before." (U S Committee for Refugees, *"The people in between - Sri Lankans face long-term displacement as conflict escalates"*, March 1996, p1)
 - 4 As one humanitarian official has noted, "the war is now for people, not for territory". The authors conclude that, "As with most conflicts, it is the civilians in Sri Lanka who suffer the most." (United States Committee for Refugees, *op cit*, p11 and p14)

The Refugee Council's Panel of Advisers for Unaccompanied Refugee Children has had referrals from 44 Sri Lankan children since its inception in 1994, including two young boys aged nine years old. Many of these children will have been sent by their parents or guardians to the UK in order to avoid conscription into the LTTE. Although the UK government has reached an agreement with the Sri Lankan government to return unaccompanied children if their claims for asylum are refused, the Refugee Council has worked to ensure that return will only occur if a suitable carer can be found in Sri Lanka. There have been no such returns to date.

During the course of 1996, a delegation of Sri Lankan refugee organisations met with staff from the Refugee Council to raise their concerns over the apparent sea-change in decision making by the Home Office with regard to asylum applications from Sri Lankan nationals. Between 1990 and 1993, over 96 per cent of all applicants had been granted leave to remain in the UK. Since then, over 95 per cent have been refused. Despite its widely recognised impact on the civilian population, the beginning of Eelam War III has not had any significant impact on the high levels of refusals. This is in spite of the fact that some commentators argue that the situation facing Tamils both in the north and in Colombo since 1995 has deteriorated.

The Refugee Council organised a delegation of refugee community organisations to visit both the office of the United Nations High Commissioner for Refugees in the UK and the Immigration and Nationality Directorate, the unit within the Home Office responsible for making decisions on asylum applications. Following these discussions, the Chief Executive and the Head of International Affairs at the Refugee Council visited Sri Lanka at the beginning of December to meet with refugee and human rights organisations, local government officials and diplomats. This report is based both on the findings of that visit and research at the Refugee Council. In order to protect the identity of some of the interviewees, they have not been identified within the text.

2. Setting the scene

2.1 The road to war

In the first two decades following the declaration of independence in 1948, ethnic divisions between the majority Sinhalese and minority Tamil populations were overshadowed by the hopes of aspirant nationalism. It was not until the 1970s that militant Tamil nationalism emerged after negotiations between moderate Tamil leaders and successive Sinhalese-dominated governments had failed to provide sufficient guarantees of minority rights. As discrimination increased, so moderate Tamil leaders were pushed into the political margins and militant Tamils took centre stage in the debate over ethnicity.

In 1972, the then United Front government of Sirima Bandaranaike (mother of the current President, Chandrika Bandaranaike Kumaratunge) refused to accede to Tamil demands for significant political power sharing guarantees. Instead, the 1972 constitution enthroned Buddhism as the state religion, accorded a higher status to the Sinhala language and removed the provisions safeguarding minority rights. Many Tamils argued that the new constitution denied them equal access to higher education and employment. Following the 1972 constitution, Tamil political parties united into the Tamil United Front (TUF), which was superseded by the Tamil United Liberation Front (TULF) and its Vaddukoddai Declaration in 1976, which, for the first time, called for a separate Tamil state. Tamil youth groups were formed in parallel to these movements and became the vehicles for militant Tamils - in 1972, the forerunner of the LTTE, the Tamil New Tigers (TNT) was established by Velupillai Prabhakaran.

The stakes were raised after the United National Party assumed power in 1977. Although moderate Tamils pushed for implementation of the newly proposed system of District Development Councils (DDCs), President Jayewardene lacked the political commitment to empower the DDCs. This, combined with the activities of militant Tamils, wrecked any hopes of reconciliation and doomed the DDC experiment to failure from the start. These failures marked the inability of the predominantly Sinhalese governments to adopt a multicomunity design of sharing political power and guaranteeing minority rights.¹

Communal conflict escalated in 1983 after Tamil militants ambushed a government army patrol in Jaffna District, an area populated predominantly by Tamils. The attack sparked off the current spiral of violence, as widespread rioting tore through Colombo and other major cities in the largely Sinhalese south of the country. Rampaging Sinhalese mobs attacked and burned Tamil homes and businesses, often relying on voting registers provided by government officials to identify their targets.² The civil war had begun in earnest, and for the next four years relations between Sinhalese and Tamils deteriorated rapidly, with thousands of civilians being affected by the fighting and forced to flee their homes.

In 1987, the government of India intervened directly in the conflict by dispatching an Indian Peacekeeping Force to the island. They also persuaded the Jayewardene government to adopt a semi-federal constitutional structure for a degree of self government in the provinces and Tamil majority areas. The subsequent involvement of the Indian Peacekeeping Force in the conflict, however, and the decision by the LTTE to

1 According to political scientists, the period 1972-1983 represented the third stage in the deterioration of Tamil-Sinhalese relations. The fourth stage, of armed struggle, continues to the present day.

2 In a week of anti-Tamil violence by the majority Sinhalese population throughout the south an estimated 3,000 Tamils were killed and over 18,000 Tamil homes were destroyed. By 1 August 1983, 125,000 Tamils were internally displaced.

withdraw from the arrangement, plunged the country back into war. After seven years of intermittent warfare, the election of Chandrika Bandaranaike Kumaratunge's People's Alliance in parliamentary elections - albeit by a slim majority - followed by her landslide election in the presidential election in November 1994 appeared to represent the possibility of a peaceful solution to Sri Lanka's ethnic question.

During the elections, Chandrika had stressed the theme of ethnic reconciliation and her People's Alliance party commanded the support of moderate Tamil parties in parliament. After coming to power, President Chandrika ordered the partial lifting of the economic blockade on the northern part of country and began negotiations with the LTTE. In January 1995, both sides agreed on the cessation of hostilities. After four rounds of talks, however, negotiations broke down and violent conflict resumed when the LTTE destroyed two navy ships in the eastern port of Trincomalee in April 1995. Soon afterwards, the Government announced that it would seek "peace through war" and, in October 1995, launched a major offensive against the LTTE-controlled Jaffna peninsula. In 13 years of fighting, at least 60,000 people have been killed and thousands more have been maimed. Both parties to the conflict are regularly accused of human rights abuses by international agencies, including Amnesty International.

2.2 Flight to the UK

The war in Sri Lanka between the government forces and the secessionist Tamil Tigers has produced over half a million refugees, about 35,000 of whom have arrived in the UK. Around 170,000 are elsewhere in Europe (largely Switzerland, Germany and France), while about 150,000 people have fled to south India. Those who have arrived in the UK have done so because of the historical ties between the two countries and also because of the existence of an established community. The numbers arriving have tended to increase as the war has intensified and decreased during the periods of reconciliation.

The correlation between the beginning of the three separate stages of Tamil Eelam can be seen in the graph of asylum applications from Sri Lankan nationals in the UK over the past 16 years. The surge in applications started soon after the start of the civil war in 1983, declined with the involvement of the Indian Peacekeeping Force, before rising again following the outbreak of Eelam War II. The decline in applications after 1995 can be attributed to two factors - the difficulties of leaving the war zone in the north of the country and the increased restrictions on access to the UK.³

In 1985, for example, visa restrictions were placed on all Sri Lankan nationals. One result of visa restrictions and other barriers has been the growth in the illegal transportation of asylum seekers, which results in a perilous and often deadly journey for the human beings involved. Amongst the 280 asylum seekers from south Asia feared drowned on Christmas Day in the Mediterranean Sea were 92 Sri Lankans. Their ship had apparently been deliberately rammed and sunk by smugglers.

Until 1993, the majority of Sri Lankan asylum seekers arriving in the UK received decisions of exceptional leave to remain (ELR). Refugee status is awarded by the Home Office to those asylum seekers whose claims fall within the agreed articles of the UN 1951 Convention on the Status of Refugees. Exceptional Leave to Remain is seen as a humanitarian award, which allows asylum seekers to remain in the UK, although it is regarded by many commentators as a secondary status, particularly with the right to family reunion.⁴ Since 1993, however, over 95 per cent of decisions have been refusals. This reversal in decisions has been justified by Home Office officials as the result of a policy change in the use of ELR.⁵

3 For an explanation of other external and internal barriers to the asylum determination process, see *"State of Asylum"*, The Refugee Council, March 1996.

4 For further discussion of the decline in ELR awards, see *"State of Asylum"*, The Refugee Council, March 1996.

5 Meeting with Home Office officials, 19 November 1996. According to the officials, the policy up to 1993 to award ELR was applied because of the large number of applicants who had been awaiting decisions for long periods.



Applications for asylum by Sri Lankan nationals, 1980-1996

The correlation between the beginning of the three separate stages of the civil war can be seen in the above graph of asylum applications in the UK from Sri Lankan nationals over the past 16 years. The surge in applications started soon after the start of the civil war in 1983, declined with the involvement of the Indian Peacekeeping Force, before rising again following the outbreak of Eelam War II. The fall of applications in 1994 can be attributed to two factors - the difficulties in exiting the north of Sri Lanka and the restrictive asylum policies in the UK.

Instead of a blanket policy of awarding ELR to all Sri Lankan cases, from 1993 onwards, all applicants would have to prove they qualified for refugee status on an individual basis. ELR, it is argued, is now awarded purely on humanitarian grounds. Speaking at the Refugee Council's fringe meeting at the Conservative Party Conference in Bournemouth in October 1996, the Home Office Minister, Ann Widdecombe stated that, "the whole purpose of having ELR is to deal with the grey area. ELR is the grey area." In 1996, the majority of ELR awards were made to asylum applicants from two countries - Somalia and the former Yugoslavia.⁶

In a landmark decision in April 1996, however, a High Court judge ruled that the Home Secretary had wrongly rejected a number of asylum applications from Sri Lankan nationals. The two people involved, both of whom had been arrested and tortured several times by the Sri Lankan security forces, had been refused asylum and been told that they would be returned to Colombo. In light of new evidence that Tamil youths were being persecuted in Colombo, the judge ordered the Home Secretary to reconsider their claims for asylum.⁷

2.3 The burden of proof

The amount of evidence now required to attain refugee status means that each asylum applicant has to show that they are individually at risk from persecution. Having fled the conflict in the north, and fearful of arrest, detention and possible torture in Colombo, many arrive in the UK genuinely afraid of the consequences if they are forced to return. It is unlikely, however, that they will arrive with satisfactory documentary evidence to substantiate their claim in the eyes of the Home Office.

Home Office officials argue that they use a variety of sources in order to examine each asylum claim. These include the British High Commission in Sri Lanka; Foreign and Commonwealth Office information, from a variety of sources (not all of which can be put into the public domain because of sensitivity); Amnesty International reports; the International Committee of the Red Cross; the United States State Department; the Sri Lanka Monitor; Sri Lankan newspapers; UNHCR information; and a number of foreign publications. These sources of information provide the background from which the Home Office judges the application.⁸

Although stressing the importance of examining each claim on an individual basis, there is a tendency for the Home Office to produce standard refusal letters. These are informed by a policy statement produced by the Home Office on the situation in Sri Lanka. One phrase that often occurs is that, "The Secretary of State remains of the view that members of the civilian population, including Tamils, have nothing to fear from routine actions and enquiries made by the authorities."⁹ In addition, the Home Office will often cite the views both of the UNHCR and local human rights organisations to confirm its position that Tamils are not a persecuted ethnic group and should not, therefore, qualify for refugee status.

The position papers of UNHCR regarding the situation in Sri Lanka have come under concerted criticism from both refugee community organisations in the UK and international NGOs working in the country. In June 1995, for example, the same month that the bodies of torture victims began appearing in Bolgoda

6 Home Office statistics, 1996.

7 As the men's solicitor, Kanapathipillai Sritharan, stated at the end of the case, "there are many, many similar cases involving Sri Lankans who have fled their homes. If the Home Secretary rules that they do not qualify for asylum, they will have a right of appeal to an adjudicator. This is going to clog up the whole appeals system." (*The Guardian*, 20 April 1996)

8 The weight given each of the sources of information, however, is unknown. According to one worrying report, "one Home Office officer referred to Amnesty International as a "suspect outfit with an axe to grind", (interview with HO officials, December 1993, *"The Safe Country Notion in European Law"*, Rosemary Byrne and Andrew Shacknove)

9 *"Statement of the Secretary of State's views on the current situation in Sri Lanka"*, January 1997. This document is generally tabled by Home Office lawyers during appeals hearings. It was sent to the Refugee Council following discussions with Home Office officials in November 1996.

Lake, outside Colombo, UNHCR's position paper on Sri Lanka stated that, "the police have maintained their awareness of a need for a positive human rights reputation and, consequently, reports of maltreatment are rare".¹⁰

Similarly, in September 1996, UNHCR's position paper on Sri Lanka stated that "the treatment of detainees remained correct and the torture and other forms of mistreatment were not practiced by the police and security authorities in Colombo".¹¹ Two months later, a Sri Lankan Supreme Court judge stated that, "torture in police stations continues unabated".¹² No updated paper has, to date, been released. International NGOs in Sri Lanka, many of whom monitor human rights abuses, question the veracity of UNCHR's position paper.

What is apparent, through the examination of reasons for refusal letters and discussions with asylum seekers' legal representatives, is the importance of UNHCR's statement in confirming the Home Office's position on the situation in Sri Lanka. And UNHCR's position as the international body with a duty to protect refugees means that its statements on the situation in Sri Lanka makes a considerable impression on appeals tribunals in the UK. It effectively enables the Home Office to argue that thousands of Sri Lankan asylum applicants should not be offered protection in the UK.

The establishment by the Sri Lankan Government of a Human Rights Task Force is also often cited by Home Office officials as an example of an improving human rights situation. In contrast to the preceding decade, however, it should be noted that while the number of human rights abuses in Sri Lanka has declined, those that continue to occur are still contrary to international conventions.¹³ As the United Nations has noted, "the domestic legal system of Sri Lanka contains neither all the rights set forth in the Covenant nor all the necessary safeguard to prevent their restrictions beyond the limits established by the Covenant".¹⁴

Moreover, the documents and interviews cited in this report are evidence of continued human rights abuses in Sri Lanka. For example, in August 1996, Amnesty International reported that, "While noting and welcoming a marked improvement in comparison with the widespread pattern of gross and systematic violations in previous years, Amnesty International is concerned that the government is not living up to its stated commitment to human rights. Extrajudicial executions, 'disappearances', torture and widespread arbitrary arrests continue to take place."¹⁵ The organisation also noted that, "there are signs that the government may be reneging on its commitment to bring to justice the perpetrators of past human rights violations."¹⁶

These concerns are shared by statements from other departments within the UK government. In November 1996, the Foreign Office minister, Dr Liam Fox, told Parliament that, "I have been worried in recent days by an increasing number of reports of human rights abuses".¹⁷ That these abuses continue to occur, and that asylum seekers continue to be refused status in the UK, begs the question of what will happen to those refused asylum seekers who are returned to Sri Lanka. More pertinent, perhaps, is the question of whether the use of ELR is apparently no longer an option in deciding Sri Lankan claims and whether it should not be applied for humanitarian reasons.

10 "The security situation in Sri Lanka and return of rejected asylum seekers", UNHCR, Geneva, 23 June 1995.

11 "UNHCR information update on Sri Lanka", UNHCR, Geneva, 9 September 1996

12 *The Island*, 10 November 1996

13 One reason for the decline in the number of human rights abuses has been end of the armed struggle between the Sri Lankan Government and the extremist Sinhalese group, the JVP.

14 Comments of the Human Rights Committee, Sri Lanka, UN document, CCPR/C/79/Add.56, 27 July 1995, paragraph 10.

15 "Sri Lanka: a wavering commitment to human rights", Amnesty International, August 1996.

16 *ibid.* See also "Sri Lanka: reports of extrajudicial executions during May 1995", Amnesty International, June 1995.

17 *Hansard*, Column 325, 27 November 1996.

In order to investigate these issues, a delegation from the Refugee Council visited Sri Lanka in December 1996, and examined two areas in particular. The first was to see whether there was an alternative internal flight option, that is whether those Tamils who have been forced to flee their homes for fear of persecution in the north of the country would be able to live elsewhere in the country. Following on from this question was the opportunity to examine the reality of the situation facing Tamils in Colombo, both in the context of internal flight and return from abroad.

3. Caught in the middle

“The military offensives carried out in the Jaffna Peninsula by the Sri Lankan armed forces since the latter part of 1995 were not accompanied by any decline in the observance of human rights standards by the Sri Lankan Government”.¹

3.1 Peace through war

The archway on the Chavakachcheri road leading into the town of Jaffna states, simply, “Jaffna welcomes you”. It was here, in September 1996, that Krishanthi Kumarasamy, an 18 year old Tamil student, was gang-raped and murdered by soldiers. When her mother, brother and a neighbour went to the sentry point to enquire of her whereabouts, they were also killed.² The incident highlights the fears of many Tamils presently living in the Jaffna Peninsula, an area which, according to NGO workers who have visited the area has armed military personnel everywhere and is akin to a military operational zone.³

For many years, Jaffna had been the stronghold of the Tamil Tigers, the symbolic capital of LTTE-controlled territory in northern Sri Lanka. In October 1995, the Sri Lankan army launched an all out attack on the town, with the apparent aim of capturing Jaffna with its population intact, in order to use it as a bargaining tool in its negotiations with the LTTE. The decision to mount the attack, according to one humanitarian agency, was “the latest turn in a spiral of violence that has traumatised Sri Lankan society and further ruptured relations among different ethnic groups”.⁴

By the time the army finally captured the town, however, it was largely deserted. Large numbers of civilians began leaving Jaffna in October 1995, many of whom were forced into abandoning their homes and belongings by the LTTE. According to aid officials, the mass exodus from the area did at least reduce the number of civilian casualties during the fighting. By the end of December 1995, it was clear that the first military engagements of Eelam War III had resulted in the displacement of between 300,000 and 450,000 people.

The vast majority of them are now in LTTE-controlled areas, although the government would prefer that they return to Jaffna as soon as possible. The allegations of human rights abuses in government-controlled areas - fuelled by the sort of events described above - have dissuaded many Tamils from returning. The possibility of their moving to another part of the country - or, in the parlance of governments, of their having an “internal flight alternative” - is inhibited by the two warring sides in the civil war. In addition, many are fearful of returning to government-controlled areas because of

1 “Statement of the Secretary of State’s views of the current situation in Sri Lanka”, January 1997.

2 The Ceylon Tamil Teachers Union report that one of its member, Nagamuthu Selvartanam, aged 57, was arrested at a checkpoint in Pungankulam on 14 June 1996, and has since disappeared. (*Sri Lanka Monitor*, October 1996)

3 PARinAC Focal Point, South Asia, report to UNHCR EXCOM, October 1996.

4 “The people in between - Sri Lankans face long-term displacement as conflict escalates”, US Committee for Refugees, March 1996, p1.

possible retribution by the LTTE, who have been criticised by a number of international agencies for human rights abuses against the civilian population. In effect, this mass of people has been caught in the midst of two armies, who view them not through humanitarian eyes, but purely as pawns in the politics of war and negotiation.

3.2 A people abused

Allegations of disappearances and extrajudicial executions in northern Sri Lanka appeared throughout 1996. In July 1996, an LTTE bomb in Jaffna resulted in a number of retribution by members of the army in the area against the local population. In August 1996, the Sri Lanka Monitor reported that, "human rights agencies fear that over 200 youths may have disappeared in the Jaffna peninsula since Operation Sunray in December 1995. Many of them are being held in army interrogation centres, 'which are springing up all over Jaffna'."⁵

By December 1996, a leading Tamil MP told the Refugee Council delegation that about 500 people had disappeared. Another prominent Tamil MP reiterated this view, stating that "the situation in the Jaffna peninsula is very bad, with arbitrary arrests and a large number of disappeared". He estimated that 800 people had been arrested by the security forces. A relief worker of an NGO working in Sri Lanka stated that the list of people missing in Jaffna was growing every week.

One human rights organisation described how a detainee had been kicked to death during questioning, an incident that was witnessed by three of his fellow detainees. When the man's relatives went to see the local army commander, they were told he had been released. After repeated requests for information, however, the army commander admitted that the man had been killed. "Things are bound to get worse," the representative told the Refugee Council delegation. "The discipline of the army cannot be sustained. This government is waging war more seriously than the previous one and human rights are not a priority issue."⁶

This was confirmed by Joseph Pararajasingham, a Tamil MP, who wrote to President Chandrika Kumaratunge alleging that extrajudicial killings, torture and disappearances are on the increase. In the three weeks before 15 September, he stated that over 200 youths had been detained. Amnesty International reported that six people from Kaithady, a town 5 miles east of Jaffna, disappeared earlier that month.⁷ By January 1997, Joseph Pararajasingham had submitted a list to the president giving the names, addresses and dates of arrest of 70 people who had subsequently disappeared.⁸

These human rights abuses are not confined to the Jaffna Peninsula. According to Amnesty International, "at least 24 civilians are reported to have been extrajudicially executed by members of the army on 11 February 1996" in a village in Trincomalee district. The report added that, "several of the 25 people wounded in the same incident, who are currently receiving treatment at Trincomalee Base Hospital, told human rights workers how soldiers broke open doors and windows of houses and fired at those inside... One of the women killed was pregnant."⁹ In early August, the bodies of eight youths who had been arrested by the army were recovered from a grave in Thenmaratchy. In December, a number of bodies, some of them dressed in school uniform, were washed ashore on the Mullaitivu coast, a story confirmed by the Red Cross.¹⁰

5 Sri Lanka Monitor, August 1996.

6 Interview with human rights activist, December 1996.

7 Sri Lanka Monitor, September 1996.

8 Sunday Times, Colombo, 15 December 1996.

9 Amnesty International, Urgent Action, 13 February 1996.

10 Sunday Times, Colombo, 15 December 1996.

Moreover, the abuses are in no way solely confined to the Sri Lankan security forces. In July 1996, former Assistant Government Agent, Thambu Ramalingam, was shot dead by two youths. He had taken part in the official ceremonies in December 1995 restoring Jaffna to government control. Two weeks later, another Tamil Mrs Sarojayogini, was also shot dead by the LTTE. A note left by her body accused her of betraying the organisation. In LTTE-held areas, Amnesty International have found "evidence of grave human rights abuses... including deliberate and arbitrary killings of Sinhalese citizens; summary executions of Tamil people considered to be 'traitors' and torture and ill-treatment of prisoners; and children who were coerced and sometimes forced to join the armed group."¹¹

3.3 The fear factor

The Chairman of the Human Rights Task Force told the Refugee Council delegation that there were approximately 400 people missing in Jaffna. The explanation from the army, however, was that these people may have joined the LTTE, might have been killed earlier and their deaths were only being reported now for compensation purposes or may have simply left the area.¹² Whatever the explanation for these disappearances, the effect on the local population cannot be underestimated. As the US Committee for Refugees have stated, "many Jaffna residents express concern about their security. Hundreds of young people have reportedly disappeared. While many may be in military custody, the military refuses to acknowledge that it holds them, causing their families great anxiety."¹³

These fears have been further exacerbated by stories of the rape of young Tamil women by Sri Lankan soldiers. In November 1996, a ten year old girl was reportedly gang-raped by a group of soldiers.¹⁴ During the incident in Trincomalee district in February, Amnesty International reported that, "one of the women, Arumathurai Thanalakshmi, was reportedly dragged from a boutique in the village and taken to the milk collection centre where she was raped before being shot".¹⁵

A leading women's rights activist told the Refugee Council delegation that, following the bomb explosion by the LTTE in July 1996, which had killed the local army commander, "the new general in Jaffna had let his troops off the leash". A human rights activist expanded on this point by adding that, "many of the soldiers come from areas where rape is routine. If beatings are allowed, then so is rape."

In November 1996, a Western diplomat visited two camps in Vavuniya, where refugees from Jaffna were being held. "In both camps," he reported, "we asked people whether they would rather live under the government or the LTTE. The very vocal response was that they preferred the LTTE. They described killings of civilians by the military and constantly referred to the numbers of rapes taking place. One man said, 'the LTTE took all our money, but they did not take our lives and they did not spoil our daughters'."

3.4 A rosy picture

In its pronouncements to the international community, however, the Sri Lankan government is understandably reticent about the reports of Tamil fears of the situation in Jaffna. "The people of Jaffna and the army are getting on extremely well at the moment," the Sri Lankan Foreign Minister, Lakshman Kadirgamar, told the BBC in an interview in October 1996. "That doesn't mean there aren't incidents

11 "Sri Lanka: wavering commitment to human rights", Amnesty International, August 1996.

12 Meeting with Chairman, Legal Director and Project Office of the Human Rights Task Force, December 1996.

13 US Committee for Refugees, *op cit*, January 1997.

14 *Sri Lanka Monitor*, November 1996. This incident was also reported to the Refugee Council during a discussion with D.Sitharthan in December 1996.

15 Amnesty International, *Urgent Action*, 13 February 1996.

from time to time," he conceded. "But there is nothing, absolutely nothing, like the problems that existed five or six years ago."¹⁶

Similarly, the Sri Lankan High Commission in London quoted a Reuters report from Jaffna in November 1996, which stated that the local Chief of the International Committee of the Red Cross had said that, "generally speaking, the relations between the civilian population and the army are getting pretty good". This was despite her admission that there were still abuses occurring.¹⁷

Those journalists who attempted to report incidents of human rights abuses, however, were not given such prominence. According to Article 19, the international centre against censorship, "overall, the government and the military successfully denied reporters access to the fighting, and to many of those who had witnessed it and suffered its repercussion, to a degree which seasoned journalists have told Article 19 they have not experienced in other countries at war."¹⁸

The organisation also reported that, "humanitarian organisations which sought to report suspected violations of humanitarian and human rights law by the military came under strong public attack from the government... The effect of both formal and informal censorship of the conflict was to ensure that the wider public received only the official version of events in the north."¹⁹ This was most vividly seen when ICRC was threatened with the closure of its operations by the Foreign Minister after it exposed the Navalay church bombing, which killed 65 people and injured over 150.

One aspect which the government continued to reiterate was its commitment to human rights. "We have told them (the army) that they must be very watchful about human rights and they are given constant training in good human rights conduct... and that is paying off," Lakshman Kadirgamar told the BBC.²⁰ Similarly, Liz Boudreault, the Chief of the ICRC mission in Jaffna, was quoted by the High Commission in London as stating that, "I would say in almost all the cases that the soldiers who were responsible for that (rape, murder, etc) had been prosecuted".²¹

3.5 Lacking legal safeguards

In an incident reported by Amnesty International, "a young married couple living on Kacchai Road, Chavakachcheri, were taken into custody by the army. The soldiers stabbed the husband to death and then raped his wife and then stabbed her too. The report alleges that the local commander apologised and asked the villagers to come forward and identify the perpetrators. However, nobody did, apparently out of fear of reprisals."²²

In September 1996, the BBC correspondent in Sri Lanka, Flora Botsford, reported how "diplomats and aid workers have for some time been expressing concern at increasing reports of arrests and disappearances in Sri Lanka's north and east".²³ As a result, the government announced two new measures to investigate the complaints. One involved a unit made up of senior military officers, the other involved the creation of a network of citizens committees.

16 BBC interview with Lakshman Kadirgamar, 12 October 1996.

17 News Bulletin, High Commission of the Democratic Socialist Republic of Sri Lanka, 23 December 1996.

18 "Silent War: censorship and the conflict in Sri Lanka", Article 19, March 1996, p1.

19 *ibid*, p2.

20 BBC interview with Lakshman Kadirgamar, 12 October 1996.

21 News Bulletin, High Commission of Democratic Socialist Republic of Sri Lanka, 23 December 1996.

22 Amnesty International, *Urgent Action*, 13 February 1996.

23 BBC News, 15 September 1996

In December 1996, the Human Rights Task Force was finally given permission to establish an office in Jaffna. The Human Rights Task Force, created by the government as an indication of its commitment to human rights, has the legal right of "access to any person arrested or detained under the Prevention of Terrorism Act or under emergency regulations, and should be permitted to enter at any time any place of detention, police station or any other place in which such person is detained in custody or confined".²⁴ According to one report, "this requirement has not been complied with in a number of cases and the Human Rights Task Force does not appear to be concerned about it... In practice, the Human Rights Task Force has failed to carry out its duty imposed by the Regulations".²⁵ The body has also been criticised for its narrow mandate and the lack of will displayed by its officials in carrying out this mandate effectively.

3.6 A struggle for survival

Given these serious concerns, it is understandable that many of those displaced by the fighting were unwilling to return to their former homes. Following the exodus from Jaffna, many were forced to move again when the army attacked the LTTE-held town of Kilinochchi, in the Vanni area. One humanitarian agency has reported that, "conflict analysts stated that this was currently the most intense fighting in the world, equal to the Tet offensive during the Vietnam war."²⁶ According to NGO reports, over 350,000 people were forced to flee to the Vanni, where "shelter for refugees is becoming a life and death struggle. Reports say that many refugees south of Akkarayankulam are in desperate circumstances living under trees with only sarees to keep out the elements".²⁷ This has not been helped by continuing government restrictions on food and medicine into the Vanni.

Described by the University Teachers for Human Rights, Jaffna, as "a people crushed between cycles of violence", some of the refugees attempted to flee to south India.²⁸ By December 1996, 8,000 refugees had reached the southern Indian state of Tamil Nadu. Many had sold all of their belongings to pay for the \$160 boat fare. Some were not so unfortunate. On 14 October, a boat carrying 110 refugees to India capsized near Mannar Island and fourteen people, including eight children, were drowned.²⁹

"Many displaced persons in the Vanni express a great deal of frustration and hopelessness," the US Committee for Refugees stated in January 1997. "They have been displaced not once, but three or four times, and do not know if further government offensives will cause them to flee again. If forced to flee, they do not know where they would go, or how they would survive."³⁰ As the University Teachers for Human Rights, Jaffna, have reported, "freedom of movement is restricted by both the Army and the LTTE, to the extent that corruption and human rights violations are rampant".³¹ According to the report, civilians have been told by the LTTE that, "more civilians must die. Not enough of you have died. In other countries people gain liberation only after a massive death of civilians."³²

24 Presidential directions para 6(1), cited in "Arrest and detention under the current emergency regulations", The Nadesan Centre, Colombo, 1995, p10

25 *ibid*, p3.

26 PARinAC Focal Point, South Asia, report to UNHCR EXCOM, October 1996

27 *Sri Lanka Monitor*, October 1996

28 Adjournment statement in the Sri Lankan Parliament by Dr Neelan Tiruchelvam, MP, 14 November 1996.

29 *Sri Lanka Monitor*, October 1996

30 "Briefing on the situation in Sri Lanka", US Committee for Refugees, January 1997.

31 "Vanni: a people crushed between cycles of violence", University Teachers for Human Rights, Jaffna, October 1996.

32 *ibid*.

For thousands of people in northern Sri Lanka, the renewed fighting has only resulted in increased misery, destitution and fear of persecution. Caught between two protagonists obstinately dedicated to a military solution to their quarrel, they have little choice but to remain where they are. Fears of arrest, torture and rape dissuade them from returning to their homes. Many look south, to the possibility of beginning their lives again, away from the war zone. But as we shall see in the next chapter, the possibilities for flight southward are limited, and there is little respite from the war.

4. The Gateway

“The Secretary of State understands that many hundreds of thousands of Tamils continue to live outside the conflict zone and, so far, it continues to be the case that conditions there are reasonably safe and normal for Tamils, and others.”¹

4.1 At the crossroads

During their visit to the refugee camps in Vavuniya, the Refugee Council delegation were introduced to a Tamil woman who told them how her son had been picked out for questioning when they arrived at the checkpoint separating the LTTE-controlled and government-controlled areas. After returning to the checkpoint for the following eighteen days to ask about his whereabouts, she had been beaten up by the security forces. Her face showed the evidence of these events - it was bruised and was missing several teeth. And she still didn't know what had happened to her son, who had not been seen since their arrival.

Thandikulam camp is one of eleven welfare centres which have been established in and around Vavuniya to cope with the sudden influx of refugees from the north. The town of Vavuniya lies at the crossroads of the 'cleared areas', controlled by the government, and the 'uncleared areas', controlled by the LTTE. Anyone wishing to move from the north to Colombo has to pass through the camps, where they are screened by the security forces, which work alongside militiamen from Tamil groups. Permission to travel onwards to Colombo rests with the local army brigadier and the local Government Agent (GA) has no power in the matter.

On 22 October 1996, restrictions on civilians travelling south were temporarily removed by the military, whether in response to protestations from the Indian government about the large numbers of refugees fleeing to their shores or in preparation for a new army offensive.² Some 6,000 people crossed over into the cleared areas in the first two days. By 5 December 1996, 26,629 people had arrived in Vavuniya.³ All of the refugees were forced to pass through the military checkpoint at Thandikulam, on the road from Jaffna, about 4km north of Vavuniya. From there, the refugees were sent to different welfare centres in Vavuniya depending on their places of origin, with, for example, former residents of Jaffna being housed in Vepankulam.

“Many of these persons,” the Tamil MP, Dr Neelan Tiruchelvam stated in November 1996, “who come to Thandikulam are those who have in a short period of time experienced multiple displacements from Jaffna to Chavakachcheri, from Chavakachcheri to Kilinochchi, from Kilinochchi to Omanthai and from

1. “Statement of the Secretary of State's views of the current situation in Sri Lanka”, January 1997

2. Some observers claim that the removal of restrictions was in preparation for a new army offensive to take control of the 45 mile road between Kilinochchi and Vavuniya. (*Sri Lanka Monitor*, October 1996)

3. According to the Vavuniya Government Agent's report, amongst these were 14,106 were from Jaffna; 5,337 from Kilinochchi and 3,547 from Mullaitivu. (*Vavuniya Government Agent report*, December 1996)

Omanthai to Thandikulam. When they reached Thandikulam, they are in a state of physical and mental exhaustion compounded by the uncertainty that awaits them upon arrival.”⁴ Those who are screened out to Vepankulam, were divided into two camps, one for families and one for youth. The Refugee Council delegation heard concerns about the conditions in one of the camps.

4.2 Allegations of torture

The major concern about the camps, however, surrounds allegations of torture and disappearances at Thandikulam. During the initial screening process, all young persons in the age range of 15 to 30 are separated and undergo intensive screening. This is due, in part, to suspicions amongst the security forces that the LTTE have only allowed families to leave the ‘uncleared areas’ if they take with them a young LTTE fighter. During the Refugee Council delegation’s visit to Vavuniya, however, senior government officials in Vavuniya expressed grave concern about 50 detainees, for whom, “no one is accountable”.⁵

These fears were confirmed during a visit by a leading western diplomat to Vavuniya. “There are unofficial (illegal) arrests happening in the camps. Youths are being taken without any arrest receipt and sent back into uncleared areas. From some recent data, twelve youth were arrested and when the parents of these young people inquired, they were told they were sent back to uncleared areas. ICRC were able to trace only three. The fate of the others is still a question to me and others, including the GA.”⁶ Indeed, as of 19 November 1996, a total of 1,181 youths were being held at Thandikulam, of whom 308 had been cleared by the army. In spite of being cleared, however, they remained in the camp.

In an interview with a Colombo-based lawyer, the Refugee Council heard claims that seven people had been killed at Thandikulam camp under torture and saw sworn affidavits alleging torture. The lawyer told the delegation how the camp had blood spattered walls, and listed the torture methods used in the camp - these included filling a shopping bag with petrol and pulling it over the suspect’s head; shoving bottles into vaginas; sticking chillies into rectums and hanging suspects upside down until they confessed. The lawyer added that, “any young fellow who is arrested will be tortured”.⁷ These claims were supported in an article in *The Tamil Times*, which quoted the President of the local citizen’s committee as saying that, “there is even a secret camp to which people are abducted and tortured”.⁸

The University Teachers for Human Rights, Jaffna, report that there are, in fact two torture camps, “one at Malar Maligai under the People’s Liberation Organisation of Tamil Eelam (PLOTE) and the other is Ramya House inside the Air Force camp, under the Counter Subversive Unit”. They note that “civilians have been subjected to various levels of harassment, beatings by the security forces...”⁹ There have also been allegations of rape occurring in other camps in the Vavuniya area. “Young women in the camps were very nervous and parents were very concerned about their daughters,” one western diplomat noted. “[P]eople had heard that a 17 year old girl had been gang raped by police at Poonthoddam Welfare Centre. We confirmed this with the GA.”¹⁰

4 Adjournment statement to the Sri Lankan Parliament by Dr Neelan Tiruchelvam on the displacements in Vavuniya on 14 November 1996.

5 Interview with senior government officials in Vavuniya, December 1996.

6 Report of the visit of a leading western diplomat to Vavuniya in November 1996.

7 Interview with lawyer, December 1996.

8 “*On the edge in Vavuniya*”, *Tamil Times*, 15 August 1996.

9 “*Vanni: a people crushed between cycles of violence*”, University Teachers for Human Rights, Jaffna, October 1996.

10 Report of the visit of a leading western diplomat to Vavuniya in November 1996.

Attempts by monitoring bodies to confirm these allegations of torture have, however, been unsuccessful. A number of local and international organisations, including the local Government Agent, the United Nations High Commissioner for Refugees, the Refugee Council and the International Committee of the Red Cross have been denied access to the detention centre.

4.3 Acting with impunity

One of the groups believed to be responsible for the human rights abuses is the People's Liberation Organisation of Tamil Eelam (PLOTE). Described by the University Teachers for Human Rights, Jaffna, as "a militant Tamil group", PLOTE have been working closely with the Sri Lankan armed forces since 1990.¹¹ Many of its cadre in Vavuniya were imprisoned by the Indian authorities after the attempted coup in the Maldives in 1988. Included amongst them are two infamous characters, Manikkathasan and Alavanguthasan, who "are held responsible for an number of murders".¹² According to the president of the local citizen's committee, "they (PLOTE) are extorting money. They can kill anybody and get away with it."¹³

Another militant Tamil group working alongside the security forces in Vavuniya are the Tamil Eelam Liberation Organisation (TELO), who have also been implicated in human rights abuses. According to Amnesty International, "in areas of the north and east controlled by government forces," the organisation's report on Sri Lanka in August 1996 stated, "there were reports of arbitrary arrests, torture, 'disappearances' and extrajudicial executions, several of which were attributed to groups working alongside regular security forces, such as Home Guards and PLOTE and TELO."¹⁴

Similarly, the University Teachers for Human Rights, Jaffna, have asserted that, "in Vavuniya town, Tamil militant groups operating closely with the Army, such as the PLOTE and the TELO, have been responsible for harassment of humanitarian workers, and corruption and are even suspected of murder".¹⁵ In September 1996, a body with gunshot wounds was found near the market. This followed the discovery of the bodies of two Tamil Muslims and a Tamil from Trincomalee in a van on the Mannar road the same month. Their hands and feet were tied and they had been shot through the head.¹⁶

The most publicised case in 1996 was that of Subramaniam, a Colombo-based textile merchant who had been detained in Colombo and brought to Vavuniya on suspicion of having links with the LTTE. He remained in prison for four months and was only released after a fundamental rights application. He went to collect his identity card from the Counter Subversive Unit, but never returned. Three days later, the burnt remains of what was believed to be his body were found in the area. As the University Teachers for Human Rights, Jaffna, have stated, "the brazenness with which the crime was committed is a measure of the extent to which such practices had been ingrained in the system".¹⁷

The Refugee Council delegation met with D Sitharthan, the leader of PLOTE, and asked whether these allegations were true. Mr Sitharthan replied that PLOTE gets the blame because they are the ones with

11 "Vanni: a people crushed between cycles of violence", The University Teachers for Human Rights, Jaffna, 22 October 1996.

12 *ibid.*

13 "On the edge in Vavuniya", Tamil Times, 15 August 1996.

14 "Sri Lanka: wavering commitment to human rights", Amnesty International, August 1996.

15 University Teachers for Human Rights, Jaffna, *op cit.*

16 *Sri Lanka Monitor*, September 1996. The infiltration of Vavuniya by LTTE cadres has only exacerbated tension in the town, especially following a grenade attack at the railway station which injured five police officers on 19 two weeks after the discovery of the body in the market.

17 University Teachers for Human Rights, Jaffna, *op cit.*

the guns and, ominously, that “boys will be boys”. He also added that the group had been infiltrated by military agents.¹⁸ A human rights activist told the Refugee Council delegation that the killings were attributable to feuding within the PLOTE.¹⁹

What is apparent is that, as Amnesty International have stated, “members of PLOTE and TELO... seem to be allowed to operate in some areas with almost total impunity”.²⁰ The sworn affidavits seen by the Refugee Council delegation, alleging torture, will not, it appears, be enough to result in charges against the perpetrators of these crimes. The fear is that the abuses carried out by PLOTE cadres - who have been armed by the Sri Lankan government - will not be exposed because the government relies on their support to maintain their parliamentary majority.

4.4 Refused access

Of the 26,000 refugees who arrived in Vavuniya at the end of 1996, only a tiny minority have been allowed to travel to Colombo. According to the local Government Agent, as at 5 December, only 644 people had been given permission to continue their journey to Colombo. The majority, over 4,000, had been returned to a new refugee camp in Trincomalee to await despatch to Jaffna. The only method of travel to Jaffna, however, is on a ship run by the International Committee of the Red Cross, which holds just 200 people and sails once a week. In effect, these people have been condemned to months in refugee camps.

Having fled one war zone, many of the refugees find themselves escaping to a new nightmare, a nightmare containing arbitrary arrest, detention and torture as the order of the day. The decline of the humanitarian spirit is illustrated in the case of a 64 year old woman, whom the Refugee Council delegation talked to during its visit to Vavuniya. She was being held in Vepankulam camp but had not been allowed to continue to Colombo, in spite of the fact that her husband was on his death bed in a hospital in the capital. Those who have been permitted to leave the camps and go to Colombo will find another nightmare, in a war zone in which their ethnicity as Tamils will leave them prone to further suspicion and abuses of their basic human rights.

18 Meeting with D Sitharthan, December 1996.

19 Interview with human rights activist, December 1996.

20 Amnesty International, *op cit*.

5. Life in the city

“The human rights situation so far achieved by the government has been maintained and, in some respects, strengthened as far as the treatment of individuals by the police and the security forces are concerned. It is true that young male Tamils in Colombo are occasionally held by the security forces, but this is almost always for the purposes of establishing identity, and the majority of those concerned are treated in a fair and humane manner by the authorities.”¹

5.1 Under suspicion

During an interview with a leading Tamil MP, the Refugee Council delegation was told a story which epitomises the situation facing Tamils living in the Sri Lankan capital, Colombo. He described an atmosphere in which Tamils face day-to-day harassment, including street searches and arbitrary detention, where people readily inform on their neighbours. The MP recounted the tale of a Tamil insurance clerk, who was awarded the President’s Gold Medal as a mark of excellence. On the way to the award ceremony, however, he was detained. The following year, the same happened. Despite his recognition by the state on paper, as a Tamil on the streets of the capital, he was viewed as ethnically suspect.²

Since 1990, more than 150,000 Tamils have arrived in Colombo, fleeing from the war in the north. They have joined 350,000 Tamils already living in Colombo, creating a situation in which almost 25 per cent of the population of the capital are Tamils. The security forces are concerned that amongst them are LTTE suicide bombers awaiting a prearranged signal from their leaders in the north. These fears are shared by independent analysts, who believe that the capital is thoroughly penetrated by the LTTE. The assassination of President Premasada in 1993 and the blowing up of the Central Bank in Colombo in January 1996 are just two examples of the ability of the LTTE to bring the war to the capital.³

Media stories in the predominantly Sinhalese press also serve to increase this sense of suspicion. Two months before the Refugee Council delegation visited Colombo, a letter appeared in the press which had been leaked by the government. This alleged that, “a considerable number of Jaffna Tamils who settled in Colombo and suburbs in the past three years were engaged in passing information to the LTTE. Fifty per cent of those who went from here (Jaffna) and settled since 1993 are sent by the LTTE.”⁴

In 1994, the Swiss Organisation for Aid to Refugees (OSAR) sent a delegation to Sri Lanka to investigate allegations of human rights abuses and the question of whether it was safe to return failed asylum seekers to Colombo. They noted that, “every Tamil is under threat regardless of social or economic status”.⁵ A year later, UNHCR stated that, “as the response of the police is not always focussed, it is

1 “Statement of the Secretary of State’s views of the current situation in Sri Lanka”, January 1997.

2 Interview with Neelan Tiruchelvam, December 1996.

3 Prior to the Central Bank bomb, the LTTE had destroyed two oil installations just outside Colombo on October 22, 1995, and made a suicide attempt on army headquarters in Colombo on November 11, 1995.

4 *The Island*, 4 October 1996

5 “The time is not yet ripe”, Swiss Organisation for Aid to Refugees, 1994, p9.

bound to cause inconvenience for the many innocent people who are arrested or otherwise affected in the course of such round-ups".⁶

That this atmosphere of suspicion continues was confirmed by the experience of Professor S Ratnajeevan, who returned to the country after 20 years of exile in the US. Writing in the Tamil Times, he described how his sister and her husband were caught in a police swoop at a bus station. "Upon noticing a mark on my sister's elbow from an old wound, he (the policeman) then accused her of undergoing LTTE training and, seemingly looking for more marks, roughly asked her to raise her skirt well above her knees in front of his voyeuristic men and the crowd that had gathered."⁷ It was only three days later that the professor learned, following an anonymous call from a prison worker, that his sister and her husband had been arrested.

Thanks to his contacts within the government, the couple were released, but the professor's attempts to register a complaint about the behaviour of the police were ignored. While he was awaiting the court proceedings to secure their release, he witnessed two incidents which, he writes, "summed up for me what is happening in the country. A senior police officer appeared accused of disappearances. That he was accused at all is redeeming. That he was not asked by the bailiff to stand in the dock like the other accused and stood there in a suit with a smug smile was frightening."⁸

Later in the day, the professor saw "an old Hindu friend, in court that day to give evidence on his stolen gold chain, [who] was clueless to what was going on because the proceedings were in Sinhalese, and it was a good few minutes after his case was called and postponed that he knew that his presence was no longer necessary. It shows that the state," the professor writes, "despite stated intentions, continues to treat Tamils as non-persons."⁹ The professor concludes that, "Tamils, to be safe from police harassment, need good social or political connections or money to pay. Otherwise, woe betide them. As for us, we go out much less now."¹⁰

Other discussions conducted by the Refugee Council delegation in Colombo confirmed that Tamils continue to be singled out for attention by the security forces. An aid worker, for example, told how he was still subjected to extra checks and questioning, purely because he is a Tamil. A western diplomat living in Colombo re-iterated that, while Tamils are discriminated against in the capital, this is inevitable because most terrorist acts were by Tamils. This link has also been acknowledged by Amnesty International, which stated in 1996 that, "in Colombo, the number of arrests were particularly high in the aftermath of attacks attributed to the LTTE in the capital". It adds that, "among those most at risk of arrest were young Tamil men and women, particularly those who had recently travelled to Colombo from the north and east."¹¹ This is especially the case for those Tamils whose identity cards state their birthplace as Jaffna.

5.2 Routine detention

While the security forces' fears are understandable, there continue to be worrying signs that their commitment to human rights remains low. In 1995, human rights agencies reported that over 600 Tamils were being held illegally in Colombo jails or police stations, often in overcrowded and unsanitary conditions with no access to their relatives or legal representation. It has also been estimated

6 "The security situation in Sri Lanka and return of failed asylum seekers", UNHCR, Geneva, 23 June 1995.

7 "Being a Tamil in Colombo", Tamil Times, September 15, 1996.

8 *ibid*

9 *ibid*

10 *ibid*

11 Amnesty International, *op cit*, p21.

that more than 800 Tamils have been held for more than four years in Magazine and Kalatura prisons outside Colombo.¹² A year later, Tamils continued to be held indefinitely in detention. According to the Tamil MP, Joseph Pararajasingham, 76 youths have been detained by police for over three months. One human rights activist told the Refugee Council that between 500 and 1,000 Tamils are detained every month.¹³

A lawyer recounted the story of one of his clients, a student who had gone to Kandy to sit her exams. When she went to the police station to register her presence, as is required under the Emergency Regulations, she was detained. She spent the following two and a half months sleeping on the corridor of the police station, unable to leave and subjected to beatings with bamboo sticks. Although she speaks only Tamil, she was pressurised by the police to sign a statement in Sinhalese in order to exonerate their actions. Finally she was told that if she wanted bail, she would have to withdraw her fundamental rights application before the Supreme Court.¹⁴

A similar case occurred in July 1995, when Mr V. Satchithanathan, a resident of Colombo and a bank employee, was arrested and detained without any apparent reason. He refused to sign a confession in Sinhalese. Another detainee, Kandasamy Thiyagarajah, began a fast in Magazine prison demanding his release, after being arrested in March 1995. He claims that after a habeas corpus application was filed in the Court of Appeal on his behalf he was forced to sign a confession to justify his detention.¹⁵ These incidents are not solely confined to Colombo. There have been arrests of Tamils in many other southern areas, and a number of Hill Country Tamils have been held in police stations and prisons for several years.

5.3 Continuing abuses

In June 1995, the emaciated and decomposing bodies of young Tamils began surfacing in Bolgoda lake, south of Colombo. In the weeks that followed, others mysteriously surfaced in rivers and culverts around the capital. Most of the 31 bodies had been strangled or drowned. All, whether male or female, had their heads shaven. Most of them had been killed in the Special Task Force headquarters in Colombo. One student was fortunate to escape. He had been snatched by the police opposite the railway station before being detained, where his head was shaven and he was locked up, naked and blindfolded, with three other young Tamils. Fortunately, he was released. The others were all tortured.

In November 1996, the Supreme Court judge, Mr P Ramanathan, stated that, "the court had made a number of judicial pronouncements against the use of torture and inhuman treatment by law enforcement officers, but regardless, torture in police stations continue unabated".¹⁶ This was confirmed by a number of people the Refugee Council delegation met in Colombo. One high-ranking western diplomat confirmed that "everyone" who is taken into custody gets roughed up a bit.¹⁷

In 1994, the OSAR delegation reported that the "security forces have set up secret places of detention... The methods used in these secret places of detention cannot be monitored by any national or international organisation and the detainees are completely unprotected. According to surviving victims, torture is standard practice."¹⁸ Whether these secret places of detention still exist is unknown, but

12 Sri Lanka Project, *Briefing*, October 1995.

13 Meeting with Mr A Vinayagamoorthy, December 1996.

14 *ibid.*

15 *Sri Lanka Monitor*, September 1996.

16 *The Island*, 10 November 1996.

17 According to Tamil refugee community organisations in the UK, there have also been Sinhalese disappearances. Since the decline of the JVP, however, these have dropped substantially, thereby accounting for the decline in human rights abuses nationwide.

18 OSAR, *op cit*, p8.

allegations of torture continue to surface. These include the assault of a 72 year old man with chains and the case of a 59 year old man, who had his hair pulled out and his fingers broken, before he was burnt with cigarettes whilst being held in detention in Magazine Prison.¹⁹

As well as torture, Amnesty International stated in 1996 that “since the resumption of the armed conflict, more than 60 people have disappeared after arrest by members of the security forces in the east and Colombo... (and) it represents a clear pattern of gross human rights violations”.²⁰ There are also fears that military death squads may have returned to the capital. A retired Tamil engineer, Mahadeva, was abducted in a white van on December 25, 1996, from his residence in Bambalapitiya.²¹ His whereabouts is still unknown.

5.4 A culture of impunity

Despite these allegations of human rights abuses, it is welcome that the present Sri Lankan government has publicly committed itself to improving human rights for all its citizens. This attitude is reflected in a number of refusal letters written to Sri Lankan asylum applicants in the UK, where the Home Office points to a number of actions by the Sri Lankan government in promoting human rights, both legally and also through increased awareness of the concept amongst the Sri Lankan security forces.

As part of this process, the government issued a number of provisions in conjunction with the Emergency Regulations detailing the treatment of detainees. These, however, have been criticised by Amnesty International for a number of reasons, most notably that they considered “these provisions to constitute a direct incentive to interrogating officers to obtain information or ‘confessions’ by any means, including torture”.²² Another organisation has stated that, “since they are regularly revised, most military and police personnel are unaware of the latest rulings. On the whole they consider the use of torture not as an injustice, but rather as a legitimate means of controlling Tamil terrorism.”²³

According to President directives, moreover, “the person arrested shall be afforded reasonable means of communicating with a relative or friend to enable his whereabouts to be known to his family”.²⁴ As we have seen from the incidents quoted above, this is not always the case. Indeed, the Human Rights Task Force has only been able to trace six of the 18 people who were reported missing during October 1996.²⁵ Furthermore, and again contrary to the examples described above, “a statement of a person arrested or detained should be recorded in the language of that person’s choice, who should thereafter be asked to sign the statement”.²⁶

The continued existence of impunity for crimes committed by the security forces, which was seen by the Professor Ratnajeewan during a court action against a senior policeman, can also be seen in the lack of prosecution of offending officers. The relatives of 35 Sinhalese schoolboys, who were murdered during the JVP insurrection in Embilipitiya in 1989, say that the eight soldiers accused of involvement in their deaths remain on active duty in the area. Similarly, the 22 officers who were detained in 1995 for the murder of the 31 Tamils later found floating in various places around Colombo, have all now

19 Sri Lanka Monitor, October 1996.

20 Amnesty International, *op cit*, pp15-16.

21 Sri Lanka Monitor, December 1996.

22 “Security measures violate human rights”, Amnesty International, July 1995, p11.

23 OSAR, *op cit*, p8.

24 “Arrest and detention under the current emergency regulations”, The Nadesan Centre, Colombo, 1995, p6.

25 Sri Lanka Monitor, December 1996.

26 The Nadesan Centre, *op cit*, p7.

returned to active service after being granted bail.²⁷ Some are now reportedly serving in the Jaffna Peninsula.

5.5 The question of return

In November 1995, the Refugee Council interviewed a number of Sri Lankan asylum seekers, two of whom claimed that they had been tortured in Colombo. One, a 70 year old man, was held without charge for six weeks and tortured repeatedly. The other, a 19 year old woman, told how, after her parents had been killed and her home village destroyed, she had been forced to flee to Colombo. There she had been arrested three times and held in detention, where she was beaten up and burnt with cigarettes. Her application for asylum in the UK, however, had been refused and she was visibly terrified of the possibility of being returned to Colombo.

The issue of returning failed asylum seekers to Colombo has been the subject of debate between international NGOs, UNHCR and European governments for a number of years. The OSAR delegation to Sri Lanka in 1994 reported that, "the Human Rights Task Force, set up by the government for monitoring human rights, vehemently warns against repatriation - (they told the delegation that) 'The time is not yet ripe'".²⁸ The sanctioning of the return of refugees from south India by UNHCR in 1992 prompted some European governments to begin their own repatriation programmes. UNHCR's position remains that it is safe for European governments to return failed asylum seekers to Sri Lanka, albeit with a number of safeguards, including valid documentation.

It was the stance taken by UNHCR that prompted many refugee community organisations to initially raise their concerns with the Refugee Council. In September 1995, Clement Arulanathan was refused asylum and deported from Sweden. On his return to Colombo, he was beaten up by security staff at the airport.²⁹ Ten months later, two Tamils who had been refused asylum and deported from Germany were arrested at Colombo airport.³⁰ Combined with the reports of human rights abuses in the capital, it is understandable why Sri Lankan refugee community organisations are both nervous and critical of the policy of returning failed asylum seekers.

In Colombo, the Refugee Council delegation had a chance to investigate these allegations. They were shown a sworn affidavit from an asylum seeker who had been returned to Colombo from Switzerland in July 1996. On his return to the capital, he should have been met by a representative from either UNHCR or ICRC, but as they failed to turn up, he went to a lodging house. After an anonymous letter was passed to the police, he was handcuffed and taken for questioning.

"While the said interrogation was going on," his affidavit states, "I was chained to the leg of a table by my interrogators till 3.00am. Thereafter I was taken to another place in the vicinity where there was a water tub, about three and a half feet high, and along one side of which was a row of bamboo sticks. My legs were firmly tied to the bamboo sticks and I was forcibly immersed in the water in the tub. As my head was being forced into the tub and I was being suffocated, some other person was hitting my back with his knee. I was undergoing this torture till 8.00am."

He was detained for another eight days before eventually released and told not to tell anyone about his experience. His affidavit has been corroborated by medical evidence and he continues to have chest pains caused by the torture. Following the incident, the Swiss government unofficially suspended

27 *Sri Lanka Monitor*, August 1996.

28 OSAR, *op cit*, p10.

29 *Sri Lanka Project, Briefing*, October 1995.

30 *Sri Lanka Monitor*, August 1996.

deportation of Sri Lankan asylum seekers.

Despite the attempts by the government to promote human rights, the culture within the Sri Lankan security forces remains suspicious of Tamils - in particular young males, although all Tamils, whether male or female, young or old, are at risk. That Tamils should come under suspicion because of the actions of the LTTE is understandable. What is concerning is the continued use of detention without trial, and in contravention of the Emergency Regulations; of torture to extract confessions, often in a language not understood or spoken by the signatory; and of extrajudicial executions which are linked to the security forces. While there has been a systematic reduction in human rights violations, particularly against the Sinhalese population, there continues to be human rights violations in Colombo, particularly against Tamils, which the government appears to be unwilling or unable to prevent. It is for this reason that Colombo should not be assumed to be safe for Sri Lankan Tamils.



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