

Danish Immigration Service

Report on the fact-finding mission to Sri Lanka

14 November – 5 December 1998

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Introduction

Background to the mission

Denmark continues to receive a relatively large number of asylum applicants from Sri Lanka. From 14 November to 5 December 1998 the Danish Immigration Service and the Danish Refugee Council therefore jointly visited Sri Lanka to investigate some matters of relevance for asylum purposes: the delegation's joint report is set out below.

The aim of the mission was to update the report of the Danish Immigration Service and the Danish Refugee Council on a mission to Sri Lanka in 1997; see the Danish Immigration Service's report on the fact-finding mission to Sri Lanka, April 1997.

The aim of the mission was accordingly to investigate the influence of the most recent political and military developments in Sri Lanka on the security and human-rights situation in general and the situation of Tamils in particular.

The mission was limited to a visit to Colombo and paid particular attention to the conditions for Tamils in Colombo.

Information was gleaned from a series of meetings both with representatives of the Sri Lankan authorities and with independent sources, including international organisations and Sri Lankan NGOs.

A list of meetings held will be found in Annex 1. It should be pointed here that some of the independent sources wish to remain anonymous in the interests of their relations with the Sri Lankan authorities.

Terms of reference

I. Security situation

A. Security situation in Government-controlled territory

1. Current extent of Government-controlled territory
2. Current strength of the LTTE and the conflict between the LTTE and the security forces
3. The PLOTE, the TELO, the EPRLF or other Tamil groups opposed to the LTTE and the part they play in the Government security apparatus in Government-controlled territory.

B. Security situation in Colombo

1. Registration requirements for Tamils resident in Colombo
2. Arrangements for checks on Tamils resident in Colombo and any changes in the scale and intensiveness of such checks compared with the situation at the beginning of 1997, including changes in the treatment to which Tamils are subjected in the course of identity checks, round-ups, etc.
3. Duration of and basis for detention of Tamils.
4. Number of people put into internment under exceptional legislation relating to detention.

II. Human-rights situation

A. Human rights situation generally

1. Significance of the proscribing of the LTTE (under ER No 1/98)
2. Treatment by the authorities (police, public prosecutors and courts) of people suspected or accused of having assisted the LTTE without being a member
3. The LTTE's actual efforts to trace and punish their opponents and backsliding members or supporters

B. Freedom of movement

1. Individual freedom of movement within the country

C. Freedom of expression

1. Administration of government censorship of coverage of military operations in the north
2. Other curbs on freedom of expression, including any censorship of NGOs' publicising of their human rights work

D. Legal safeguards

1. Compliance with the guidelines laid down for the security forces under the emergency legislation as regards arrests, including time limits, reporting to the Human Rights Commission, informing relatives, etc.
2. Conditions for people arrested and prosecuted under the ER/PTA, including the scale of and basis for sentencing
3. Investigation and prosecution by the authorities in cases in which members of the authorities are suspected of human rights violations

E. Human Rights Commission

1. Performance by the Human Rights Commission (HRC) of its task of inspecting police stations and prisons
2. HRC monitoring of implementation by the security forces of the guidelines laid down for them
3. Publication by the HRC of reports on its work
4. The HRC's role locally outside Colombo

III. Possibility of travel from the Northern and Eastern regions to Colombo and vice versa

1. Arrangements for controlling travel to and from Colombo
2. Restrictions on leaving the LTTE-controlled territory for Government-controlled territory

IV. Entry situation for returning Tamils

1. Arrangements for controlling entry by returning Tamils including any changes in the extent, basis and duration of detention
2. Any registration of Tamils returning to Sri Lanka
3. Residence-permit requirement for returning Tamils who wish to remain in Colombo

V. Departure situation

1. Possibility of departing from places other than Colombo
2. Any changes in control arrangements at Colombo airport compared with the situation in 1997

VI. Passport-issuing procedure

1. Any changes in the procedure compared with the situation in 1997

I. Security situation

A. Security situation in Government-controlled territory

1. Current extent of Government-controlled territory

The present conflict in Northern Sri Lanka began in 1983 and fighting has been virtually continuous since then, albeit with varying intensity. The situation was relatively quiet from 1992 to 1995 but in April 1995 fighting broke out again. During that period Sri Lanka was divided into Government-controlled and the LTTE-controlled territory. The front lines were not fixed but shifted according to the relative strength of the two sides. There are, moreover, "grey areas" in the Northern and Eastern parts of the country where it cannot be said with certainty whether the territory is Government or LTTE-controlled since both Government and the LTTE forces are to be found there.

The delegation was given information by various interviewees about the extent of government-controlled territory. It should be stressed here that there are differences between information from the Government and that from independent sources.

In May 1997, the Government launched a military offensive under the code name "Jaya Sikuru" ("Final Victory") to the north of Vavuniya. According to information provided, the aim of the offensive was to open up a land route from Vavuniya to the Jaffna peninsula. In September 1998, the LTTE managed through a major offensive to capture Killinochchi, which constituted a major strategic consideration in the government's efforts to open up a land route to Jaffna. Shortly after, the army took Mankulam and the road from Jaffna to a point immediately south of Paranthan.

After the LTTE took Killinochchi, it was, according to various international sources, the LTTE which controlled most of the Vanni region, i.e. the area south of the Jaffna lagoon as far as Vavuniya. Government forces control pockets on both sides of the road from Vavuniya to Mankulam. On the western side the front line runs to the north of the road from Vavuniya to Mannar. The road from Vavuniya to Mannar was opened up by the military in February 1997, but a number of sources said that there were security problems in travelling along this route and there was no public transport. Authorisation is, moreover, required in order to travel to Vavuniya. On the eastern side of the road various international sources say that the front lines are not clearly defined.

At the beginning of December 1998, the Government called off the "Jaya Sikuru" military operation and embarked on a new offensive under the code name "Rivi Bala" which sources say is aimed at linking Odduchuddan with Nedunkerni and Mankulam.

The Jaffna peninsula is described by the Government as a "cleared area"¹ which is 100% under government control. However, a number of international sources describe Jaffna as a "grey area" where the LTTE carries out "hit-and-run" actions and the situation may turn to the advantage of the LTTE. One international source took the view that there were a number of "high-security zones" including Kankasanturai on the island of Kayts and the area round Point Pedro and Elephant Pass together with a number of other pockets on the peninsula. Two international sources said that there were also "grey areas" to the north of the Jaffna lagoon.

¹ Districts in the northern territory are divided into "cleared" and "uncleared" areas with the former being defined as areas under the control of the Sri Lankan army.

According to several international sources, the situation on the east coast is highly unstable. There are probably more areas in the eastern part of the country which may be described as unsafe than there were in 1997 and there are no fixed boundaries between "cleared" and "uncleared" areas. International sources say that the LTTE has a strong base in Mullaittivu while towns in the areas between Kokkilai to the north and Pottuvil in the south are under government control.

2. Current strength of the LTTE and the conflict between the LTTE and the security forces

A number of sources including both national NGOs and international organisations indicated that the LTTE was able to exercise considerable pressure on government forces but that it was difficult to assess the size of the LTTE forces. Two international organisations estimated that the LTTE had from 10 000 to 15 000 well-trained soldiers and that there was a long way to go before the end of the struggle. One source referred to the LTTE's most recent victory at Killinochchi in September 1998 and took the view that the LTTE would be able to continue fighting for many years to come.

2.1 Recruitment to the LTTE

The UNHCR thought that the LTTE had become more heavy-handed in its recruitment procedures and that many of its members might in future surrender to the authorities. The UNHCR referred in this connection to the fact that, when the army took Mankulam in September 1998, 26 children surrendered to government troops. The UNHCR knew of a number of cases where the LTTE recruited in schools. As for the nature of recruitment – forcible or voluntary – the UNHCR pointed out that there was no clear demarcation between forcible and voluntary recruitment in the case of people living in LTTE-controlled territory.

According to one international organisation which wished to remain anonymous, recruitment is mainly on a voluntary basis but using a highly convincing and skilfully conducted campaign, which involves the performing of plays and the showing of video films in schools. The same source points out that adherence to the movement should be seen against the background of generally limited opportunities for children, the prospect of unemployment and the difficult living conditions resulting from the fact that people have been expelled from their homes five or six times.

The issue of recruitment of child soldiers has been investigated by the UN². According to a press release of 12 May 1998, the LTTE assured the UN that children under 18 years of age would not be used in fighting and that children under 17 years of age would not be recruited. The LTTE has, moreover, agreed to draw up guidelines for ensuring application of these assurances in the recruitment procedure. One international source which wished to remain anonymous did, however, know of cases where children as young as 15 were recruited. The source also pointed out that it was difficult to speak of voluntary recruitment in the case of children. The same source nevertheless feels that recruitment is generally on a voluntary basis. The source also said that the conditions for internal refugees in the area must be seen as one of the main reasons for joining the movement.

² The question of recruitment of children was investigated in the course of the visit on 12 May 1998 of Mr Ottunus, Special Representative of the Secretary-General for Children and Armed Conflict.

The Centre for the Study of Human Rights thought that – particularly in the case of children – there was forcible recruitment to the LTTE and said that there had been cases where the LTTE abducted school children for military training. The source referred in this connection to the 26 children who surrendered to the military when Mankulam was taken in September 1998.

The Institute of Human Rights did not think that there was any fixed pattern of recruitment but felt that people in LTTE-controlled territory were generally vulnerable and that there was an extremely fine distinction between forcible and voluntary recruitment in such territory. The source further said that there were now rumours of recruitment to the LTTE also being conducted among groups of Indian Tamils in Sri Lanka.

The MIRJE (Movement for Inter-racial Justice and Equality) said that all Tamils were forced to do work of some sort for the LTTE and that this made it difficult to live in areas controlled by the LTTE. The MIRJE explained that parents try to prevent their children being recruited into the LTTE army after school. The MIRJE said that there was a decline in the number of children recruited to the LTTE.

2.2 Conflict and prospect of a peace process

A number of sources, including Neelan Thiruchelvam, a Member of Parliament for the TELF party, and one international source which wished to remain anonymous took the view that there was no immediate military solution to the conflict.

One international source which wished to remain anonymous commented that the LTTE did not seem to have the military capacity to conquer and control "Eelam" (an independent Tamil State). On the other hand, the same source thought that the Government could not defeat the LTTE, *inter alia* because the movement was of a guerilla nature. The source felt that the conflict could only be resolved politically through peace negotiations.

Neelan Thiruchelvam thought that there was no basis at present for meaningful talks between the LTTE and the Government. Neelan Thiruchelvam pointed out in this connection that negotiations were made difficult by the fact that the LTTE's leaders were geographically isolated and the LTTE had been outlawed.

Neelan Thiruchelvam said that no results had been achieved by the Government's two-pronged strategy of taking military action to open up a land route from Vavuniya to Jaffna while initiating negotiations with the LTTE. Moreover, as a precondition for initiating negotiations with the LTTE, the Government has stipulated that the LTTE must give up any demands for an independent State and that fighting must cease. After more than a year and a half military operations are now two-thirds of the way to completion and the LTTE has been outlawed, which makes it difficult to find ways of initiating negotiations. The Government's decentralisation proposal aimed at delegating considerable powers to local authorities so that Tamil communities in the North and East have a high degree of local self-government ("Devolution Package") was submitted to Parliament in September 1997 but received no support from the chief opposition party, the UNP. According to Neelan Thiruchelvam, the proposal would in any case have been doomed without the LTTE participation in the process. It was his view that talks about negotiations should begin, possibly with the assistance of foreign mediators.

A Member of Parliament from the UNP party, Jaylath Jayawardana, was critical of the Government's strategy, which had ceased to be two-pronged and was concentrating solely on military action. According to Jayawardana the military strategy had failed. Jayawardana pointed

out that three districts were at present directly under LTTE control and there were no supply routes to northern areas by air, sea or land. The authorities in Jaffna were therefore isolated from the rest of the country.

Jayawardana also accused the Government of having broken the 1997 Liam Fox Agreement by outlawing the LTTE. Jayawardana took the view that negotiations should be started with the political leadership of the LTTE without any conditions being imposed by the Government.

Jayawardana pointed out that the UNP had submitted its own proposal for an amendment to the constitution and said he regretted that it had still not been submitted to Parliament. The proposal involved a division of power between the largest ethnic minorities and other groups.

The UNHCR pointed out that initiatives had been taken by the business community in Colombo to start negotiations on a peace process and this was regarded as a very positive sign. It was not, however, possible at the present time to give any clear indication of the likelihood of such initiatives producing results.

According to one lawyer, Mr Ponnambalam, the "Devolution Package" is irrelevant since the LTTE wants an independent State. The lawyer thought it illogical that the Government should try to negotiate with the LTTE while at the same time outlawing it.

The Action Group for Tamils criticised the Government for not starting serious negotiations with the LTTE and pointed out that there were no high-profile representatives of the Government, e.g. Members of Parliament, in the delegation sent to the negotiating table in Jaffna in 1994. In addition, the President was criticised for not keeping his promises, thereby forcing the LTTE to embark on an armed struggle. As for the peace process, this source said that the Government would never get the LTTE to give up its demand for an independent State.

One international source which wished to remain anonymous also took the view that the LTTE would never give up its demand for an independent State. This source said that the LTTE might be willing to accept a gradual strategy for achieving "Eelam", e.g. by embarking on negotiations for a specific period if that seemed advisable, but would always reserve the option of military action. The same source noted in this connection that there was no peace movement among the civilian population of Sri Lanka pressing for genuine action to be taken to initiate negotiations and resolve the conflict.

On 27 November, while the delegation was in Sri Lanka, a speech was given by the LTTE leader Velupillai Prabhakaran in Vanni and broadcast on the LTTE's radio "Voice of Tiger". In that speech the leader declared that the LTTE was prepared to embark on unconditional peace negotiations with the assistance of a foreign mediator. There was no immediate reaction from the Government to this declaration.

3. The PLOTE, the TELO, the EPRLF or other Tamil groups opposed to the LTTE and the part they play in the Government security apparatus in Government-controlled territory Colombo

The Ministry of Defence explained that none of the groups participated in the work of the security forces in Colombo but the leaders of the various groups did have their own private security guards in order to ensure their personal safety.

A number of interviewees said that the PLOTE, the TELO and the EPDP were all present in Colombo as political parties but did not have any security/military functions. The groups were, however, authorised to carry weapons in order to ensure their own safety.

According to INFORM (Sri Lanka Information Monitor), the EPDP functions as an armed group in Colombo. They accordingly operate as informants for the police and the army and themselves conduct interrogations. It was INFORM's view that people who have left the LTTE-controlled territory and have escaped from Vavuniya with the army's help are at great risk of being used as informers by the various groups. INFORM said that the army informs the EPDP of the arrival of such persons in Colombo and the EPDP then examines them itself.

The Action Group for Tamils said that the EPDP was involved in both political and military activities in Colombo.

One international source which wished to remain anonymous made the general point that there were a lot of internal disputes between the various Tamil movements, even within the political and military wings of individual movements.

Other parts of the country

The Ministry of Defence said that the Tamil movements – the EPDP, the PLOTE, the TELO and the EPRLF – cooperated with the authorities in trying to establish peace and democracy. The Ministry of Defence indicated in this connection that these groups had helped the army to maintain order inter alia when elections were being held.

It was pointed out that the EPDP cooperated with the army at checkpoints in Jaffna while the PLOTE cooperated with the police and the army in Vavuniya. The Ministry of Defence stressed that the various groups worked under army supervision.

The Ministry of Defence said that there were in addition a number of restrictions on the activities of such groups, since they could only act with a view to their personal security.

The Ministry of Defence added that they were aware of the unfortunate effects of such groups carrying weapons and explained that efforts were being made to integrate them into the general system with a degree of success. The Ministry of Defence also pointed out that 60 members of the EPRLF had been recruited into the army and that the PLOTE had indicated that it could agree to something similar.

According to one international source which wished to remain anonymous, the Tamil movements operate as paramilitary groups carrying weapons and arresting people. According to that source,

the PLOTE has camps in Vanni where there are reports that torture has been used. The same source says that the Tamil movements are feared by the population because of their violent behaviour and people who have left LLTE territory are particularly exposed to pressure with a view to making them grass on the LTTE.

INFORM said that the EPDP and the EPRLF operated in the east, while the PLOTE and the TELO were present in Vanni. The PLOTE has, according to INFORM, its own detention camps in Vanni where interrogations are conducted.

According to the MIRJE, the EPDP and the EPRLF form part of the army, while the PLOTE and the TELO cooperate with the army but are not directly financed by it. The PLOTE has a strong base in Vavuniya where it operates checkpoints. According to the MIRJE, the EPDP is also present in Jaffna. In Batticaloa it is, according to the MIRJE, mainly the TELO who are represented.

As for the screening camps in Vavuniya, one international source which wished to remain anonymous said that Tamil groups were involved in the screening process. The groups did, moreover, recruit in the camps, demand money and act as informers. The same source was also of the opinion that the groups could not operate without the connivance of the authorities. The source also said that the EPDP was present in Jaffna and that the PLOTE and the TELO had recently returned to that area.

B. Security situation in Colombo

1. Significance of the national identity card

The national identity card has for years been of decisive importance for individual Sri Lankans as regards registration and residence in Colombo. The identity card must, moreover, be produced on request, inter alia in the course of identity checks at checkpoints, arrests, house searches and other control arrangements, and the card must be produced when submitting an application for a passport.

Several interviewees said when questioned that people were particularly vulnerable if they were not in possession of the national identity card or if the identify card appeared in some way suspicious.

As a result of changes in the process for obtaining the national identity card, this is something which is now dealt with separately.

Changes in the conditions for issue of a national identity card (setting up of a Front Office under the Ministry of Justice)

In 1997 an office was set up in Colombo – the Front Office – with the task of assisting people from strife-ridden areas of Sri Lanka, including the northern and eastern areas, who have lost or are unable to produce, e.g. birth certificates, and are therefore prevented from obtaining a national identity card. The Office, which has been in operation since 2 December 1997, is able to assist persons who were originally resident in the following administrative districts: Jaffna, Mullaittivu, Killinochchi, Vavuniya, Trincomalee, Mannar, Batticaloa, Ampara, Point Pedro, Kalmunai and Puttalam. The Office can also help people returning from abroad including rejected asylum applicants who originally came from one of the aforementioned districts.

The Office can assist by issuing birth, marriage and death certificates as well as national identity cards. It should be noted that applications for national identity cards and certificates are

not processed by the Front Office but forwarded to the institution responsible, either the Registrar-General's Office (responsible for issuing birth, marriage and death certificates) or the Department of Registration of Persons (responsible for issuing national identity cards).

Staff at the Office can speak Tamil.

The Office can help with the issue of identity cards in three cases:

1. The issue of a national identity card for the first time to people who have reached their 16th birthday.
2. The replacement of an identity card if the original has been lost.
3. The issue of an identity card if there have been any changes in marital status, name or address or if a new photo is needed.

In the case of the procedure for issuing a replacement card, the Front Office said that the person concerned must produce documentation relating to the missing/lost identity card in the form of a police notification giving particulars of the name, date of birth, present address in Colombo, permanent address and length of stay in Colombo. In addition, the number of the father's identity card must be given when making the application. Finally, a birth certificate must be produced.

The Office said that at present it usually took about two weeks for the issue of a national identity card whereas this could previously take several months. The Office received about three hundred applications for identity cards a month. It was also pointed out that the Office received most applications from Tamils from Jaffna and Muslims.

The applicant must come to the Office in person when submitting the application. The applicant will receive a copy of the application which can be produced, e.g. for identity checks. When the identity card has been issued, it is sent to the applicant by post but the person concerned can also decide to go and fetch it. The cost of issuing an identity card is 50 rupees, which amounts only to a few Danish crowns.

The UNHCR thought that the chance of obtaining an identity card if a person came from the northern or eastern areas of Sri Lanka was considerably greater now that the Front Office had been set up. The UNHCR said it had information from western Ambassadors that rejected asylum applicants who were sent back to Sri Lanka did make use of the Office. According to information, the persons concerned had had positive experiences with the Office and the process of issuing an identity card was reasonably quick. The UNHCR referred a number of people to the Office and there had not so far been any complaints by those concerned. The UNHCR noted that there were clearly still many people who do not know of the Office's existence.

The UNHCR added that there was a postbox in a newspaper under the heading of "Ombudsman Column" to which people could write about their problems and there had not recently been any articles indicating that an identity card could not be obtained.

The Netherlands Embassy said that asylum applicants who had been returned could obtain a national identity card within two weeks on application to the Front Office.

The Swiss Embassy said that the Embassy could help with the issue of national identity cards for asylum applicants who had been returned and the Embassy knew of cases where it had been

possible to issue an identity card within five or six days after the Front Office was set up.

INFORM said that submitting a police notification in the case of loss of an identity card could in itself cause problems since the person concerned would be closely interrogated about the circumstances in which the identity card was lost, etc. INFORM also said that the authorities were wary about issuing new identity cards since the person concerned might be wanted by the police and wish to change his name. INFORM was not aware of any cases of people being arrested when notification of loss of an identity card was being followed up, but there had apparently been cases of harassment. In certain cases, the person concerned was asked to provide an attestation from Grama Niladhari³ (formerly Grama Sevaka) and INFORM had heard of some problems in obtaining such an attestation if the person was not known to Grama Niladhari.

As for the Front Office, INFORM said that people complained of practical problems in consulting the Office, inter alia that Tamil speakers were not always available there, nor were the necessary forms. INFORM did not have the impression that an identity card was issued more quickly if the application was made to the Front Office and many people therefore preferred to go directly to the identity-card office. INFORM had never heard of people receiving their identity cards in less than two weeks. INFORM did, however, also say that it was not usually informed of successful applications.

The MIRJE said that the Office helped displaced persons within the country but there was always a problem if such persons had been returned from abroad. The MIRJE pointed out that there was often no information in archives about people who had been living outside Sri Lanka for many years.

The Home for Human Rights said that they knew of cases where it had taken from three months to one year to obtain a national identity card. The Home for Human Rights was not aware of the Front Office's existence.

2. Registration requirements for Tamils resident in Colombo

Description of rules

Rules on the registration of persons resident in Colombo are to be found in ER⁴/4/94, as amended on 21 September 1995. There have been no subsequent amendments to the formal rules governing registration of persons resident in Colombo. The ER provisions stipulate *that the head of household must – if requested by the police – supply a list of all those living in the house and indicate which are family members. The head of household must also – if so requested – inform the police of any changes in this respect. It follows, moreover, from this provision that the head of household may not house strangers without notifying the police.*

Background to rules

³ Grama Niladhari is described as a village chief answerable to the highest local Government Agent.

⁴ Emergency Regulations of 1973.

The Public Prosecutor explained that the reason for the registration requirement was that the police needed to know who was actually living in the city for security purposes. The Public Prosecutor said that many people came from strife-ridden areas to Colombo in order to find work or go abroad and the authorities were afraid that there might be terrorists among them.

The Public Prosecutor added in this connection that the registration requirement should not be seen as a punishment but simply as a purely practical means of assisting those resident in Colombo, since it made it easy for them to prove that they were living or resident in Colombo if they were asked on the street or stopped in the course of a routine check. The risk of arrest because of the absence of documents authorising a stay in Colombo was in this way eliminated according to the Public Prosecutor, who added that there were routine checks on who was living in Colombo.

The UNHCR explained that the registration requirement should be seen as a consequence of the authorities' attempts to make people return to their regions of origin when their residence permits expired.

Persons covered by the rules

There are differing views as to whether all or only some specific sections of the population are covered by the obligation to register. INFORM said that there was considerable confusion – on the part both of the population and the authorities – as to who should register. INFORM pointed out in this connection there was no legal obligation for all Tamils to be registered but they all believed that there was. INFORM said that they had been pointing this out the authorities for three years now but nothing had come of it.

The Public Prosecutor said that the registration requirement could in principle cover all Sri Lankans including Muslims, Sinhalese and Tamils.

The Inspector-General of Police said that the registration requirement in practice applied to persons from the war-torn areas in the north and east who were not Sinhalese.

The other interviewees said when consulted that the uncertainty about who was covered by the registration requirement in practice meant that all Tamils living in Colombo registered with the police.

Documents to be produced in the course of registration

Several interviewees were in agreement when pointing out that the documents required for registration varied and requirements depended on the individual police officer/police situation and the general security situation in Colombo.

The Inspector-General of Police said that registration was based on the national identity card. If there were any doubts about the genuineness of the identity card, authenticated photos would be required (from the Justice of the Peace⁵ or Grama Niladhari). The Inspector-General of Police pointed out that an identity card could be issued on the basis of false information even if the paperwork were genuine. The Inspector-General of Police said that the police had the option of

⁵ The Justice of the Peace is appointed by the Minister for Justice. He is usually a government official, judge, lawyer or other former civil servant. His main function is to see to the administration of evidence, authenticate documents and issue recommendations. He has no right to intervene in disputes or exercise any judicial function.

checking information in the identity card with the ID office and that such a check could be carried out in a short time by a telephone call to the office or by sending someone there. Until the identity could be regarded as proven, the head of household was responsible for the person concerned. The Inspector-General of Police said that in some cases it would also be a requirement to produce the authorisation to travel to Colombo if the person concerned had made the journey to Colombo via Vavuniya.

INFORM said that there had been cases in which the person concerned was required to produce not only an identity card but also a birth certificate. If the person concerned was not in possession of an identity card, a letter from the Justice of the Peace or Grama Niladhari⁶ would normally be sufficient.

Other interviewees including the MIRJE and a lawyer, Ratnavel, said that the police sometimes required the person concerned to produce three authenticated photos.

Differing interpretations of the registration requirements

The Public Prosecutor explained that the registration system used to be more arbitrary, with individual police officers determining the requirements for registration, but that guidelines had now been laid down for registration in Colombo. The Public Prosecutor said that a few simple forms had been prepared for completion on registration. He also said that there were no longer any complaints about the interpretation and implementation of the guidelines for registration. The Public Prosecutor added that he had regular meetings with the police, at least once a month, to discuss implementation of the standardised guidelines.

The Public Prosecutor was aware that there had been complaints about procedures in individual police stations, inter alia the fact that police stations were only open for registration on a few specified days. In this connection it was for the individual police station to draw up more detailed guidelines for the days and times when people could register.

INFORM said that the registration requirement was what caused Tamils the greatest problems in Colombo and pointed out differences in the interpretation of the guidelines involved.

The lawyer, Mr Ratnavel, said that Tamils were subject to harassment by the police in connection with registration. He pointed out that registration took a very long time since police stations had their own rules about the times at which registration could take place. This in itself involved the risk that the police – simply in order to harass people – would come at night and arrest persons on the grounds they were not registered.

Actual registration

Registration takes place at the local police station in the district where the visitor is living. As already indicated, it is the head of household, i.e. the proprietor or tenant of the accommodation, boarding house or the like, who is held responsible for informing the police about people living with them and for informing the police about any changes in this respect. It is not a legal requirement that the visitor report to the police station in person for registration. A number of interviewees have, however, said that some police stations require the visitor to report in person.

There are no particular rules for a visitor living with friends or family in Colombo, but in practice it

⁶ See footnote 3 above.

is the visitor himself who contacts the police station in order to be registered, usually together with the person with whom he is staying.

INFORM said that the police (in the case of Tamils living in boarding-houses, or "lodges" as they are known), have agreed to a procedure whereby the proprietor of the boarding-house supplies the police with a list indicating who is living in the boarding-house. The list must give the visitor's name, the number of their identity card and the number of the authorisation to travel to Colombo if the person concerned travelled to Colombo via Vavuniya.

Several interviewees, including the Public Prosecutor, the Institute of Human Rights and the UNHCR, said that the visitor was given a copy of the registration. The UNHCR added that there were apparently no longer so many complaints from Tamils having problems in obtaining a copy of the registration, and that the situation in this respect seemed to have improved. The Netherlands Embassy on the other hand said that not all police stations supplied copies of registration.

Need for extension of registration

Tamils with a permanent residence permit for Colombo

In the case of Tamils who have been resident in Colombo for a considerable time, INFORM said that there was usually an agreement with the local police that it was only necessary to register once.

The MIRJE said that people usually registered for a year or a year and a half at a time, after which it was necessary to contact a police station if they wanted to remain in Colombo.

The Law and Society Trust said that Tamils currently had to register and any delay in registration involved the risk of the person concerned being detained.

Tamils with a temporary residence permit for Colombo

It is the police who determine the duration of a residence permit for Colombo. The duration of a residence permit depends on the specific situation, inter alia the aim of the stay in Colombo. On expiry of the residence permit, the person concerned must in principle return to his region of origin unless the residence permit is extended.

The Inspector-General of Police said that a residence permit for Colombo was for a limited period and issued on the basis of information regarding medical treatment, work, studies, business, family visits, etc., and that the permit could be extended if there were good reason to do so.

INFORM said that people could have their residence permits extended if they were able to convince the police that they had good reasons to remain in Colombo. If the reason given for staying in Colombo was departure from the country, the person would be asked to produce proof of this, e.g. in the form of a visa or similar document. INFORM said that persons who found problems in having their residence permits extended might be able to ensure that they could remain in Colombo if they moved to another district.

The Institute of Human Rights said that a residence permit was usually granted for one or two weeks at a time, but there were no hard and fast rules on this and it was largely for the individual police officer/police station to determine duration.

The Lawyers for Human Rights said that it was not necessary to re-register when a residence permit

expired but that the police should be informed that the person was remaining.

A number of interviewees, including the Inspector-General of Police, the UNHCR and INFORM, said that the police did check whether the expiry date for authorised residence had been overstepped. The UNHCR stated that it was not a case of the person being sought by the police on expiry of the permit but that there was a risk of a person who had stayed beyond the expiry date being arrested and detained or being informed that he must return to his region of origin.

A number of interviewees said that some Tamils had had problems in getting their residence permits extended and that those problems had been resolved by the person concerned paying a bribe to be allowed to stay. The Home for Human Rights noted in this connection that people who had been registered with the police for a fairly long time with a view to departure had often had to pay a bribe.

The Netherlands Embassy said that the police did not have the resources to check that the duration of permits for a limited period of residence had not been overstepped. The Embassy pointed out that this could involve people who were simply waiting for the issue of a visa for departure and were not given particularly high priority by the police. Regarding possible problems with registration, the Embassy said that the police only registered people on the basis of an identity card and were not interested in refusing to extend a residence permit or refusing to register people since they would then to some extent lose control over who was living in Colombo. The Embassy added that there might of course be exceptions to this rule and there had been mention of cases where people had paid bribes in order to have their residence permits extended.

All the interviewees consulted – with a single exception – said that they had not heard of the police forcing people to leave Colombo, even if their residence permits had expired. INFORM noted that some people "chose" to leave Colombo because of the harassment to which they were subjected and some people had been forced to leave Colombo on expiry of their residence permits, but there were no further details on this.

On the question of the residence-permit requirement for people who have been returned and originate in the northern and eastern regions, see Section IV.

3. Arrangements for checks on Tamils resident in Colombo and any changes to the scale and intensiveness of such checks compared with the situation at the beginning of 1997

The population of Colombo continues to be subject to a whole series of checks on account of the general security situation in the country. A number of interviewees stressed that all sections of the population were at risk of such checks but Tamils continued to be a particular target. Checks usually involved identity checks, arrests, detentions, mass arrests and house searches as well as vehicle checks.

Scale and intensiveness of checks in general

All those consulted agreed that the question of the scale and intensiveness of checks was closely tied in with the general security situation in the country, e.g. whether there had been recent more major LTTE terrorist actions or the police had received information about a planned LTTE attack.

In this connection, the UNHCR said that in the days leading up to "Heroes Week"⁷ checks had

⁷ On 26 November, "Great Heroes Day" is celebrated on the birthday of Mr Prabhakaran, leader

been stepped up and that these were aimed chiefly at Tamil areas in Colombo.

INFORM said that there were still many roads which were closed in the evening or at night in Colombo and some roads and areas were also closed during the day. These were usually roads leading to tv and radio stations, roads in areas where Members of Parliament lived and other roads where persons who were thought to be a particular security risk were living. INFORM said that such measures caused great inconvenience to the local population in the areas concerned and that there had been numerous complaints.

The UNHCR took the view that recently there had been some improvement in the security situation of Tamils in Colombo. The number of arrests, including mass arrests and house searches had in general declined over the last few months, although there had been a period last month (November) when checks were increased. The UNHCR added that there had been many articles about Tamils in the papers at the beginning of the year complaining about the imposition of checks, but such articles were not on the whole now appearing. The UNHCR stressed, however, that the absence of references in the press did not necessarily mean that checks were no longer being made.

One international source which wished to remain anonymous said that the security situation for Tamils in Colombo had in general improved and was better than earlier in the year when there were many mass arrests following the suicide bombs in February and March 1998. The same source said that the security forces in Colombo were treating people better than they had in 1996 and 1997.

The MIRJE said that Tamils still tended to be arrested and detained, but that the number of house searches had declined.

The Centre for the Study of Human Rights said that Tamils were generally safer in Colombo than in any other place in the country and that they were safer in any places not in northern Sri Lanka. The same source said that Tamils in the south were vulnerable owing to ethnic conflicts but that they had no security problems in Colombo. The Centre for the Study of Human Rights added that about 55% of all Tamils were living outside the northern and eastern regions and most of these were not suspected of having any links with the LTTE.

Persons subject to checks

A number of interviewees said that checks were directed primarily at young men and women of 16 to 30 years of age. Several interviewees also said that there was no longer such a big difference in the application of checks to men and women. It was pointed out in this connection that the LTTE had recently shown that it was making more use of women in its actions, e.g. in the suicide bombings in Colombo in February 1998.

INFORM said that everyone was in principle covered by the rules on checks but that they were only really applied to Tamils. INFORM also said that it was not normally the police's intention to harass Tamils. The problem was, however, that there were terrorists among the Tamils in Colombo.

A number of interviewees, including INFORM and one international source which wished to remain anonymous, said that it was generally people with an identity card from Jaffna and people

of the LTTE. The day also serves to commemorate all the LTTE martyrs.

Fact-finding mission to Sri Lanka

from the LTTE territory who were especially targeted. People coming from Colombo, on the other hand, had no particular problems. INFORM pointed out in this connection that the fact that an identity card indicated Jaffna as the place of birth might in itself be a problem, even if the person had lived in Colombo all his life.

A number of the interviewees consulted described the security situation for Tamils from socially deprived sectors as particularly bad.

Several interviewees said that a person might be subject to checks, including arrest, several times in succession since there was no central record of such checks.

Suspicion as a reason for implementing checks

A number of interviewees including the UNHCR, the Swiss Embassy, INFORM, and the MIRJE, said that checks by the authorities, including arrest and detention, were now generally directed more at individuals who were actual suspects. The sources thought that this had contributed to the general decline in the number of people arrested and detained.

The sources said that checks had in the past tended to be more arbitrary and affect everybody. The subsequent change was due inter alia to the fact that the authorities were now better informed and were therefore able to pursue a smaller number of people against whom there were specific grounds for suspicion. A number of sources said that the incident with a woman suicide bomber, who was detained by chance in February 1998 a few days before the bomb attack, was also one of the reasons for the new approach. The person concerned had been checked a few days before the bomb attack but then released without the police having found anything suspicious. This incident made it clear to the authorities that wide-sweeping checks did not prevent the LTTE terrorism.

The UNHCR said in this connection that proposals had been made for setting up a database so that the police could see in a straightforward manner whether a person had been arrested recently in some other place.

Several interviewees, including Lawyers for Human Rights and the Institute of Human Rights, said that the police could react to information (tip-offs), including anonymous information, received from private individuals or other authorities.

The Family Rehabilitation Centre explained that all Tamils were suspected of LTTE activities and could therefore run the risk of checks.

On the question of whether there was a risk of being subjected to checks solely because a member of the family had links with the LTTE, the UNHCR said that it was difficult to reach any clear conclusion but it did not at first glance seem to be a problem as such. The UNHCR did, however, add that it had no experience of cases where this had occurred.

Comments on individual check arrangements (identity checks, checkpoints, mass arrests, house searches and detentions)

Description of identity checks/checkpoints

None of the interviewees could say exactly how many checkpoints there were in Colombo. Several of them did say that the number depended on the general security situation in Colombo. Checkpoints, which are mobile or fixed, are most usually set up at strategic central points in Colombo and at places where persons and authorities deemed to require particular protection are residing. The checkpoints in Colombo are manned by the police (mostly), the army or the navy.

INFORM estimated that in February and March 1998 when the situation was particularly tense there were 200 to 300 checkpoints in Colombo.

The Directorate of Internal Intelligence, the Criminal Investigation Department and the Terrorist Investigation Bureau may also be involved in identity checks, again depending on the particular case and the degree of suspicion.

Documents to be produced in the course of an identity check

All the interviewees consulted said that producing an identity card was in principle sufficient for an identity check. It was not, however, possible to speak of consistent practice, and identity-check requirements depended on the particular situation.

A number of interviewees said that the police in some cases insisted on seeing a copy of the registration report, e.g. where there were doubts about the genuineness of the identity card. The Netherlands Embassy pointed out that this could in itself be a problem since the police did not always issue copies of registration reports.

The UNHCR said that there was reason to believe the police were no longer asking to see registration reports as often as they used to.

Several interviewees, including the Institute of Human Rights, INFORM and the Law and Society Trust, said that it was particularly people from Jaffna and the eastern provinces who were asked to produce further documents and could be required to explain in detail the reason for their stay in Colombo. The Institute of Human Rights added that they knew of cases where Tamils had been arrested even though their papers were in order.

Treatment during an identity check

A number of the interviewees consulted, including the UNHCR, the Association for the Protection of Tamils, the Action Group for Tamils and the Law and Society Trust, said that torture or other forms of maltreatment did not occur in the course of identity checks. Several of the interviewees said that Tamils were harassed during identity checks. INFORM added that they had no knowledge of people being tortured in the course of identity checks and thought that this could only be a very rare occurrence.

The Civil Rights Movement said that there had been an improvement in the treatment of people during identity checks.

INFORM pointed out that problems could arise at checkpoints simply because the police did not always speak Tamil. Other interviewees said that there were policemen who spoke Tamil at

checkpoints and that, if there were not, it would be impossible to interrogate the person concerned. INFORM further said that the danger of being subjected to heavy-handed treatment was particularly great in the course of police checks. INFORM instanced the fact that the police insisted – when carrying out identity checks in buses – that pregnant women, women with children and old people should also get out of the bus while it was being searched whereas the army allowed them to remain inside.

Duration of identity checks

The Inspector-General of Police said that people were allowed through as soon as their identity cards had been checked unless there were doubts as to their genuineness. Where a close inspection of an identity card was necessary, this could usually be completed in a few hours.

The Civil Rights Movement said that identity checks were carried out relatively quickly and that there had probably been some improvement in the situation recently.

Arrest in the course of identity checks

The Public Prosecutor said that the police had stopped arresting and detaining people in more trivial cases.

The National Intelligence Bureau said that from 20 to 30 people were arrested daily in Colombo in the course of identity checks. From 80 to 90% of those arrested would be released within 24 hours. Those who were detained for more than 24 hours were usually detained for 7 days with the possibility of this being extended to 21 days. From 10 to 15% were released without being taken into custody while about 5% were taken into custody.

The UNHCR said that the number of arrests in the course of identity checks had fallen recently.

Where arrests were made in the course of identity checks, INFORM pointed out that it might be an hour before a police official could arrive from the nearest police station. Even at the police station what happened depended inter alia on the person arrested and in particular whether they were able to speak Sinhalese or English, whether they could argue their case and whether they were able to contact their family. If they could, they were usually allowed to leave immediately after their identity had been established. The Centre for the Study of Human Rights added that the question of treatment during arrests and other checks also depended on the social status of the person concerned.

The Association for the Protection of Tamils said that there was a risk of maltreatment during interrogations and that many people were victims of extortion in the process. However, this was the case not only for people suspected of LTTE activities but for criminals in general.

One international source which wished to remain anonymous reported that payment of bribes in connection with arrests was prevalent and that the prospect of obtaining money could in itself lead to an arrest being made. The source had heard stories of many people being arrested on Saturdays as the pressure to pay in order to be released was then greater since there would be no chance of seeing a judge before Monday.

The National Intelligence Bureau and the Terrorism Investigation Bureau may be involved in the interrogation of arrestees.

Mass arrests

A number of interviewees, including the UNHCR, INFORM and the Institute of Human Rights, said that there had been a general decline in the number of mass arrests compared with 1997.

INFORM knew of two mass arrests in the first weeks of October 1998, but most of those arrested were released immediately after. INFORM added that there had been a decline in the number of mass arrests and pointed out that arrests were now made on more specific grounds and targeted individuals. INFORM also knew of a case last year where the police made a video film of the detainee in a school playground. INFORM had the impression that the purpose of such measures was to scare the population, adding that there was no evidence that the authorities had found any terrorists as a result of such investigations.

The Civil Rights Movement said that mass arrests were continuing in the hope of finding the LTTE members.

The Home for Human Rights reported an overall increase in the number of mass arrests. On being questioned, the source said that the material statistics were based on collations of figures from newspapers, specific enquiries, etc. and it was quite possible that a given person would appear more than once in the same statistics.

House searches

The Inspector-General of Police said that the number of house searches depended on the general situation.

Several interviewees, including the UNHCR, the Institute of Human Rights and INFORM, said that the number of house searches had in general declined compared with 1997.

INFORM noted that house searches were usually made at night despite the fact that the police had said that they would not make house searches between 22.00 and 05.00. INFORM took the view that the number of house searches was on average once a month and by rotation from one Tamil part of the city to another, including boarding-houses.

The Centre for the Study of Human Rights said that people were not subjected to violence in the course of house searches.

A lawyer, Mr Ponnambalam, said that the boarding-houses where many Tamils without a permanent residence in Colombo lived were particularly subject to searches.

4. Duration of and basis for detention of Tamils

Detention for 24-48 hours

The Inspector-General of Police did not want to elaborate further on the number of people detained or the basis for detaining them, but added that the number of such people depended on the general security situation in the country.

Several interviewees, including the UNHCR, thought that there seemed to be a decline in the number of people detained.

All those consulted agreed that most of the people arrested were released within a period of 24 to 48 hours. Several interviewees also said that there seemed to have been a general decline in the number of people detained compared with 1997.

The UNHCR said that 90% of those detained were released within a period of 24 to 48 hours but that, given the number of mass arrests, which was declining, it was not impossible that the average duration of arrest for other persons would be longer.

INFORM said that about 50% of those detained would be at the police station for 24 hours and would have to spend the night there and that 80% of these would then be released without being remanded in custody (within 48 hours).

The MIRJE said that about 85% of those detained were released within 48 hours in Colombo.

Lawyers for Human Rights thought that there had been a general decline in the number of those detained. In 1990, the number was 10 000 and in 1998 about 1 000.

Regarding suspicion as a basis for detention the Law and Society Trust said that the Supreme Court had issued a judgment to the effect that there had to be well-founded suspicion before a person could be detained. The Law and Society Trust said that this rule was not observed.

5. Number of people put into internment under exceptional legislation relating to detention

See section on legal security, in particular administrative imprisonment and remand in custody.

6. Living conditions for Tamils in Colombo

A number of interviewees said that the living conditions for Tamils in Colombo depended on where the people concerned came from, how long they had been in Colombo and their socio-economic status.

The Centre for the Study of Human Rights said that 55% of all Tamils lived outside the northern and eastern regions of Sri Lanka.

The UNHCR said that the possibility of settling in Colombo depended on whether the person concerned had the resources to do so. The existence of some kind of network was also important in determining the extent to which a Tamil could survive in Colombo. The UNHCR reported that most Tamils settled in the Tamil districts of Colombo and more specifically in Tamil boarding houses. The UNHCR added that – given the economic context – it had become fairly expensive to live in boarding houses and pointed out that many of these had been closed because of problems with the authorities. Further, people from abroad who were assumed to have money and Tamils from the northern and eastern regions ran the risk of having to pay extra for rent. The UNHCR said that the authorities had considered setting up transit camps for Tamils in Colombo.

The Ministry of Defence explained that moves were under way to set up an area in Colombo where Tamils could live in reasonable conditions and at reasonable prices. This involved establishing a building which could house about 800 people and was located about 5 kilometres from the centre of Colombo.

Lawyers for Human Rights said that the situation in Colombo was tense but that this was true for all groups living in Colombo.

INFORM said that it could be difficult for Tamils to find housing/a place to stay in Colombo and knew of cases where Tamils had been refused. INFORM further said that Tamils were at risk of being forced to pay extra rent on the grounds that Tamils meant trouble. INFORM also pointed out that it was particularly middle-class women and women with children who found it difficult to live in Tamil boarding-houses because the rooms were extremely small and standards poor.

The Home for Human rights said that Tamils generally experienced discrimination in obtaining work, education and housing. The Home for Human Rights added that only well-educated people or people with contacts were able to find work in Colombo. The same source added that it was an advantage not to have a Tamil surname.

The Association for the Protection of Tamils said that it was difficult for a Tamil to find work. It was explained that Tamils were not employed in the public sector and private employers were wary of Tamils and refused to employ them if there was any risk of the person being suspected of the LTTE activities.

Regarding access to employment, INFORM said that this depended on the person being in possession of the national identity card. Many employers would, moreover, according to INFORM also require copies of registration. Finally, INFORM said that Tamils were obliged to have special qualifications to find work at all, although there was no discrimination about wages.

II. Human rights situation

A. Human rights situation generally

1. Significance of the proscribing of the LTTE

Legal provisions

On 27 January 1998, in supplementary Emergency Regulations (ER No 1/98), the LTTE were proscribed. The proscribing provisions criminalise not only the LTTE but also other organisations or groups of persons engaged in activities substantially similar to those carried on, or formerly carried on, by the LTTE.

The regulations ban the wearing of any uniform, symbol or emblem which indicates association with or membership of the organisation. They also ban attendance at meetings and participation in activities connected with the organisation, as well as banning support for the organisation through fund-raising, information-gathering or other assistance. Lastly, the ban covers printing, distribution and publication of material in any way connected with the organisation and communication of decisions and declarations by the organisation with the purpose of advancing its objectives.

The sentencing range for offences under the regulations is imprisonment for from seven to fifteen years.

The provisions are attached as Annex 4.

Background to proscription

A number of interviewees concurred in the view that the motives for the introduction of the new provisions were political, pointing out that the ban on the LTTE had been imposed immediately after the attack on the Buddhist Temple of the Tooth in Kandy on 25 January 1998.

According to a lawyer, Mr Ponnambalam, the ban was imposed following foreign-policy pressure in view of the fact that the organisation had already been condemned by other countries. He thought it paradoxical to proscribe the organisation while at the same time calling on it to enter into negotiations.

Treatment by the authorities, under the new regulations, of people suspected of assisting the LTTE

None of the interviewees questioned could point to any change in the investigation and prosecution by the authorities of people suspected of or punished for working for the LTTE. Nor did any of the interviewees have any reports of the new regulations proscribing the LTTE being applied in practice.

Several of the interviewees said that existing legislation under the ER/PTA was already sweeping and widely used by the authorities to strike at LTTE-related activities.

The Institute of Human Rights explained that the new regulations had merely added a further layer to the existing legislation, which was more far-reaching than the new regulations.

According to a lawyer, Mr Ponnambalam, the new regulations were of no significance in themselves as regards prosecution for working for the LTTE. He referred here to the existing provisions under the ER/PTA⁸.

2. Treatment by the authorities (police, public prosecutors and courts) of people suspected or accused of having assisted the LTTE without being a member

As regards the above sources' reports that the proscribing of the LTTE was not of any significance in itself for prosecution of people suspected or accused of having worked for the LTTE, the subject is addressed in general terms in section D on legal safeguards.

Rehabilitation centres

The Ministry of Defence explained that there were three rehabilitation centres in Sri Lanka: one in Bendunuwewa (with 86 inmates), one in Jaffna (with 16 inmates) and one in Gangodawila for women (with six inmates). It added that people placed in them usually stayed there for a year. To illustrate conditions at a centre, it reported that someone released from one was reluctant to leave.

The Inspector-General of Police and the head of the National Intelligence Bureau explained in general that rehabilitation schemes did not come within the police sphere and so they were not very familiar with the schemes. However, the head of the National Intelligence Bureau had a good impression of them and said that those concerned took part in special training programmes.

⁸ The July 1979 Prevention of Terrorism Act.

The UNHCR stated that there were still rehabilitation centres for former LTTE cadres voluntarily turning themselves in to the authorities. According to the UNHCR, they would be detained for at least a year and then released. The UNHCR reported that the 26 children referred to earlier who surrendered in connection with the taking of Mankulam were originally held at such a centre but had now been transferred to better facilities for young people. The UNHCR had no firm knowledge of the number of rehabilitation centres but had learned that conditions at the centres were generally good.

An international source wishing to remain anonymous reported that former LTTE members, including high-profile ones, voluntarily turning themselves in to the authorities would first be interrogated by the police and then transferred to a rehabilitation centre. The source explained that interrogation could last for from two or three weeks to a number of months, according to the kind of case, adding that information from such people was as a rule of considerable interest to the authorities. The source reported there to be training schemes in operation at the centres and conditions there generally to be good. Those concerned were as a rule released after 18 months and could then, according to the source's information, live a normal life. The source had heard reports of people being transferred to centres after having served their sentence but pointed out that this was exceptional. According to the source's information, the scheme was voluntary and people opted for it for their own safety.

The Institute of Human Rights had no knowledge of the rehabilitation scheme but was aware of 26 children or young people having surrendered to the authorities.

Lawyers for Human Rights had heard reports of a rehabilitation centre for former LTTE members in Kandy but had no detailed knowledge of conditions at the centre.

The MIRJE said that there used to be a rehabilitation centre in southern Sri Lanka for young men from Jaffna. The MIRJE was aware of a case in which someone only having worked for the LTTE in a minor way had to stay at the centre for a year or two. During that time he was given "training" by the authorities, training described by the MIRJE as "brainwashing". The MIRJE did not believe there now to be any official schemes for people surrendering.

A lawyer, Mr Ponnambalam, was not aware of any rehabilitation schemes but said that in any event they did not apply to (former) LTTE members. He did, however, mention a centre which he said held people who had worked for the LTTE in a limited way, including drivers, etc.

A number of interviewees among the NGOs had no knowledge of a rehabilitation scheme.

3. The LTTE's actual efforts to trace and punish their opponents and backsliding members or supporters

The UNHCR explained that the LTTE had many possible ways of bringing pressure to bear even on people outside the LTTE-controlled territory, including relatives. The UNHCR had no knowledge of any specific cases of this, nor of any cases of punishment for desertion from the LTTE. It would nevertheless be surprised if this had not occurred. There was, however, considered to be very little scope for deserting from the LTTE.

One international source wishing to remain anonymous pointed out that it would be difficult to leave the LTTE territory without the organisation's permission. Anyone who managed to do so would be in great danger of being tracked down by the LTTE, who according to the source ran an effective intelligence operation.

A number of interviewees made the point that the LTTE were not interested in striking at low-profile members and supporters in Colombo.

The MIRJE had no specific knowledge of any cases of backsliding members or supporters having been punished by the LTTE but explained that low-profile members allowed to leave gave an undertaking not to engage in political action against the LTTE.

B. Freedom of movement

1. Individual freedom of movement within the country

The Sri Lankan constitution guarantees all citizens freedom of movement and freedom to choose their place of residence as well as freedom to return to Sri Lanka. In the light of the security situation in the country, however, the authorities have restricted such freedom, imposing limits on people's scope to travel from northern areas to southern areas. On this point, see section III.

The Ministry of Defence explained that there was in theory freedom of movement for the public in Sri Lanka but the authorities had been forced to control the scope for it on account of the security situation.

The Ministry of Defence stated in general that everyone with a good reason was allowed to go to Colombo and stay there. Regarding restrictions on going to Colombo, it explained that 90% of all Tamils would go to Colombo on account of the security situation if entirely free to do so, a state of affairs which would be quite untenable.

The Ministry of Defence reported that everyone with a permanent address in areas controlled by the authorities could go to other parts of Sri Lanka without restriction. The restrictions thus only applied to internally displaced persons and were due to the security situation.

A number of interviewees, including one international source wishing to remain anonymous, reported in general that there could not be said to be freedom of movement in Sri Lanka, pointing to the camps in Vavuniya, including restrictions on leaving the camps and restrictions on going to Colombo or southern Sri Lanka. They further made the point that registration requirements for residence in Colombo and the risk of checks, including identity checks, arrest, searching of premises, etc. also in practice restricted freedom of movement.

The MIRJE said that there was in theory freedom of movement outside the war zones.

C. Freedom of expression

Even though the Sri Lankan constitution guarantees freedom of expression, it has at times been restricted on account of the security situation in the country.

The country's largest newspaper chain, two major television stations and the Sri Lankan news agency are government-controlled. There are also, however, a large number of independent newspapers, periodicals and radio and television stations⁹.

⁹ See US Department of State, January 1998.

1. Administration of government censorship of coverage of military operations in the north (ER No 1/98)

In June 1998, also under the Emergency Regulations, a blanket ban was imposed on coverage of matters related to the ongoing civil war. *The regulations accordingly prohibit domestic and international news media from publishing material pertaining to military operations carried out or proposed to be carried out by the armed forces or the police force (including the Special Task Force), deployment of troops and use of equipment, or any statement pertaining to "the official conduct or the performance" of the security forces.* A censor has been appointed at the Ministry of Defence to administer the ban.

The regulations are attached as Annex 5.

The Ministry of Defence explained that journalists were able to obtain permission to go Jaffna and could also go to Batticaloa and Vavuniya in order to report on conditions there. This was, however, restricted by transport problems in the case of Jaffna. The Ministry said that, apart from that, restrictions applied only to the "uncleared areas"¹⁰.

As regards administration of the ban, the Ministry of Defence explained that articles had to be approved by a censor there, but censorship applied only to details of casualty figures and relative strengths of forces.

On prosecution of journalists for infringing the ban, the Ministry of Defence said that it was able to confiscate material and prosecute journalists but there had not as yet been any instances of this.

A journalist at the MIRJE said that, as a result of restrictions on travelling to northern areas, the authorities in practice prevented journalists from reporting on conditions, including social and economic conditions, in the northern and eastern areas.

The Civil Rights Movement noted that the present ban on reporting on military matters was broadly similar to the 1995 legislation on the subject.

2. Other curbs on freedom of expression, including any censorship of NGOs' publicising of their human rights work

All interviewees questioned stated that there could generally be said to be freedom of expression in Sri Lanka and restrictions on it basically applied only to matters related to the war.

The UNHCR stated that there were many opportunities for free expression and there could generally be said to be a fairly free press. It added that, apart from restrictions on reporting of military operations, there were no other curbs on freedom of expression. The UNHCR referred here, among other examples, to reports by INFORM and a recent local newspaper article on torture. The UNHCR noted that political violence was practised in connection with the holding of meetings, demonstrations, local elections, etc. and there were instances of journalists' and editors' lives being threatened.

A journalist at the MIRJE said that conditions had improved since 1994. According to the journalist, there were a number of independent newspapers appearing, including three published by the Tamil community, as well as private television and radio stations. The journalist reported that there

¹⁰ See footnote 1.

was generally freedom to criticise the government but had been cases within the last four years in which in one instance a newspaper publisher was convicted of libel against the President and in another a journalist was convicted of libel against a senior air-force officer. According to the journalist, the human rights situation could be reported on freely, as long as information about it was not linked to the war. In the journalist's view, restrictions on access to northern areas were preventing journalists from reporting on conditions in the areas concerned. The journalist noted generally that there were instances of journalists being threatened so as to dissuade them from publishing material, but many nevertheless opted to publish it.

The Law and Society Trust stated that there could basically be said to be a free press. The source pointed out here that there were private electronic media. It saw problems arising as regards coverage of military matters, pointing to the relevant censorship rules. There were also restrictions on going to the war zones, which in the source's view meant no independent information on conditions in those areas, including social and economic conditions for internally displaced persons there.

The Centre for the Study of Human Rights said that the ban applied only to military operations in the north, including statistics on arms, casualties, etc. The source explained that, apart from this, publications did appear on other matters in northern areas, including human rights.

The Civil Rights Movement explained that, apart from information on military operations in the north, there were no other subjects on which material could not be published and there was generally freedom of expression in Sri Lanka. The source added, however, that the President should still not be insulted. It also mentioned a journalist on the Sunday Leader who received permission to go to the "uncleared areas".

A lawyer, Mr Ponnambalam, reported that the ban applied only to military operations. In his view, however, a great deal of information about Tamils was never published. He nevertheless noted that both the Sunday Leader and the Weekend Express did raise cases involving Tamils.

D. Legal safeguards

As a backdrop to conditions for those arrested and prosecuted, an account will first be given of the Emergency Regulations and Prevention of Terrorism Act and the scale of detention.

Emergency Regulations and Prevention of Terrorism Act generally

People may be arrested and detained on account of the military conflict in Sri Lanka under the Emergency Regulations (ER), applicable in the country since 1973 with changes in their content and geographical coverage, or the Prevention of Terrorism Act (PTA), introduced in July 1979. For details of those two pieces of legislation, see the Danish Immigration Service's April 1997 report on the fact-finding mission to Sri Lanka.

The Emergency Regulations apply for a month at a time and for the first half of 1997 were in force throughout Sri Lanka, but in July their coverage was confined to Colombo and the surrounding areas and to northern and eastern Sri Lanka and the "border areas" respectively. The Emergency Regulations were reimposed throughout Sri Lanka in August 1998.

The basic provisions of the Emergency Regulations concerning arrest, administrative detention and remand in custody (ER No 4 of 4 November 1994, Annex 5 to the April 1997 fact-finding report) have remained unchanged.

The Civil Rights Movement pointed out to the delegation that there was a general problem with the Emergency Regulations not being fully available to either laymen or specialists. They were debated in parliament once a month, and thus continually amended. For many years the organisation had tried in vain to persuade the authorities to publish the Emergency Regulations in the daily press, for instance. Their provisions were very extensive and complex and the Civil Rights Movement published a synoptic presentation of them and had instances of enquiries from central government authorities seeking clarification of legal issues. Unavailability of the regulations could in itself stand in the way of proper implementation of them by the police and the armed forces.

1. Scale of detention, including details of the number of detainees under the ER/PTA

Detainees under the ER/PTA comprise people held in administrative detention by order of the Ministry of Defence and people remanded in custody by order of the courts.

It did not prove possible to obtain from interviewees a precise picture of the number of detainees under the Emergency Regulations and Prevention of Terrorism Act. The authorities do not keep any up-to-date records of detainees and the picture is affected by the fact that those arrested for a brief while are not necessarily shown in statistics.

The Attorney-General was thus unable to give any details of the total number of detainees under the ER/PTA. The number of detainees fluctuated, with people being released and others arrested all the time. The Attorney-General believed there to be 400 people remanded in custody at Kalutara prison, just south of Colombo, and also considered there at present to be fewer than 200 major cases involving high-profile individuals.

The UNHCR did not keep any figures on detainees.

Several interviewees put the number remanded in custody at Kalutara prison at around 700. The Family Rehabilitation Centre visited the prison in September 1998, when it recorded 670 prisoners, 50 to 60 of them criminals and the rest LTTE suspects.

The Attorney-General and an international source wishing to remain anonymous pointed out, however, that because of problems at Kalutara the criminal prisoners had been transferred to another prison, with the result that there were at present around 400 people remanded in custody at Kalutara prison.

A number of interviewees, including the Law and Society Trust, the Action Group for Tamils, Lawyers for Human Rights and the MIRJE, gave a very varied picture of the number of internees (remanded in custody, administratively detained or serving sentences), ranging from 1 000 to 4 000.

Arrest

Compliance with rules on the handing over of those arrested by the armed forces to the police

An international source wishing to remain anonymous reported that most arrests in the north of the country were made by the armed forces and people were then usually handed over to the police after seven days.

The MIRJE commented that the rule requiring the armed forces to hand anyone arrested over to the police within a certain time, in Colombo 24 hours, was observed in 90% of cases. The other 10% involved the north and east of the country, where there were problems in this respect.

2. Compliance with the guidelines laid down for the security forces under the emergency legislation as regards arrests, including time limits, reporting to the Human Rights Commission, informing relatives etc.

2.1. Presidential Directions

In connection with the work of the Human Rights Task Force (HRTF), in July 1995 the President issued a set of Directions for the protection of the fundamental rights of persons arrested or otherwise detained. Those Directions were reissued on 31 July 1997 in the same form when the HRTF was disbanded and the Human Rights Commission (HRC) set up. The Directions are attached as Annex 6. In short, the Directions require the police to inform the HRC of any detention within 48 hours. The detainee is also to be given an acknowledgement of detention, explaining the reason for it, and the detainee's relatives informed of the place of detention. Lastly, the Directions include various legal safeguards for detainees to be questioned in their own language and women detainees as far as possible to be questioned by women officers.

Reporting to the Human Rights Commission within 48 hours

The HRC noted that the rule requiring the police to inform it within 48 hours was in the main being observed and there had been improvements in this respect.

The UNHCR took the view that the requirement to notify the HRC was complied with to some extent, but the 48-hour period was probably exceeded. It pointed out, however, that many people were released within 48 hours.

A number of interviewees, including the Institute of Human Rights and the MIRJE, considered that the authorities did not generally observe the rule requiring the HRC to be informed within 48 hours.

Lawyers for Human Rights commented here that the requirement to notify the HRC within 48 hours was being met in some cases and there had been an improvement in this respect earlier in the year.

A lawyer, Mr Ratnavel, did not believe the security forces to be complying with the requirement to report to the HRC within 48 hours.

Issuing an acknowledgement

The Presidential Directions require the security forces to issue the arrested person's relatives an acknowledgement giving the name and rank of the arresting officer, the time and date of arrest and the place of detention.

According to the Attorney-General, the Presidential Directions were generally being observed. The police thus issued an acknowledgement when making an arrest and informed next of kin.

An international source wishing to remain anonymous stated that the situation as regards issuing relatives an acknowledgement had improved since 1997. It had to be borne in mind here, however, that acknowledgements were hardly ever issued before. The source said that the situation in this respect had improved in Jaffna in particular.

The UNHCR likewise reported that the armed forces in Jaffna were more widely complying with the requirement to issue detainees' relatives an acknowledgment. It attributed these improvements not to the HRC's work and initiatives but to steps taken by the military leadership in Jaffna.

INFORM and the Law and Society Trust reported that there were generally implementation problems with the presidential legal safeguards. The latter source noted that the police in Colombo observed the Presidential Directions to a greater extent, as the situation was more extensively monitored there.

Several sources, including INFORM, the Law and Society Trust and the Civil Rights Movement, noted that no-one from the authorities had been punished for failing to observe the safeguards. The Civil Rights Movement said that it had tried unsuccessfully to get the HRC to punish members of the authorities for failing to issue acknowledgements.

Requirement for questioning to be conducted in Tamil

Under the Presidential Directions, an arrested person may demand that a statement be taken in Tamil (whereupon questioning has also to be conducted in Tamil).

In the Attorney-General's view, arrests did not give rise to any significant language problem, since there were Tamil-speaking police officers at all police stations. According to the Attorney-General, moreover, any Tamil-speaker could speak Tamil well enough for questioning to be possible.

A number of independent sources noted with regard to the language problem that the citizens' action committees¹¹ were not working and confessions not being translated. INFORM similarly reported there to be insufficient Tamil-speaking police officers at police stations. It commented generally that the police on the ground were in need of human rights education.

The Law and Society Trust said that the citizens' action committees had never been set up and it also took the view that current police training in Tamil was inadequate to cope with the language problem, which entailed a lengthy process.

The Centre for the Study of Human Rights commented that there were one or two Tamil-speakers at each police station, either police officers or private individuals called upon for questioning purposes.

Questioning by a woman officer

Under the Presidential Directions, children under the age of 12 and women are as far as possible to be questioned by and held in the custody of women officers. In addition both children under the age of 12 and women are entitled to request that a person of their choice be present during questioning.

¹¹ The citizens' action committees were launched as a private initiative in 1996, partly to address the language problem. They consisted of Tamil citizens who could be called upon to interpret at the questioning of Tamils detained under the ER/PTA. They met with a measure of success, including attendance by police officers at some of their meetings. INFORM reported, however, that the government became nervous about any kind of Tamil association and attempted to establish a similar government-based system. This was the reason behind the setting up of the Anti-Harassment Committee, discussed in section E.

INFORM reported that the legal safeguard of questioning by a woman officer was not being observed. The source had itself, when a female Tamil acquaintance was detained, insisted that she be questioned by a woman. The police stated that they had sent for a woman officer, but after five hours at the police station the lady was released without being questioned.

2.2. Access to lawyers

Mr Ratnavel, himself a lawyer, said that he could contact people remanded in custody or held in administrative detention but did not have the impression that detainees could freely write to him about, for instance, torture to which they had been subjected.

The Centre for the Study of Human Rights noted that detainees generally had access to lawyers while being held, but the number of NGOs offering free legal assistance was insufficient.

The Association for the Protection of Tamils pointed out that it could not intervene during the initial questioning stage.

Mr Ratnavel commented that he did not have access to detainees being held by the armed forces or the Criminal Investigation Department and so usually did not come into contact with detainees until after they had been held for three days. The Law and Society Trust also mentioned that lawyers did not have access to detainees during questioning.

A number of sources reported instances of restrictions on freedom to choose a lawyer and several sources also said that some lawyers worked hand-in-hand with the police.

A lawyer, Mr Ponnambalam, knew of examples of Tamils being arrested by the police at the instigation of a lawyer, who then conducted the detainee's case in return for a fee shared with the police. The Action Group for Tamils added that this was true of both Tamil and Sinhalese lawyers.

INFORM knew of a case in which a lawyer extracted from a client a considerably higher sum than normal for the client's release and then shared that sum with the police.

3. Conditions for people arrested and prosecuted under the ER/PTA, including the scale of and basis for sentencing

Length of remand in custody

According to the Attorney-General, a detainee would usually be brought before a magistrate after 14 days in police custody with a view to being remanded in custody. The Attorney-General stated that the average length of remand in custody was one month and that, partly to speed up the hearing of cases under the ER/PTA, a number of cases had been transferred from Colombo to Vavuniya. There had not previously been any court in the northern part of the country, with all cases therefore heard in Colombo. The change in procedure meant that a case would usually be brought to court within two to six months. The cases heard locally involved low-profile figures, some of whom were given short, possibly suspended, prison sentences under section 5 of the PTA¹² for failure to give information about LTTE matters. Others were convicted of possession or carriage of unauthorised goods, which also carried a light sentence. Another advantage of this procedure, in the At-

¹² Under section 5 of the PTA, anyone knowing or having reasonable cause to believe that an LTTE-related offence has been committed who fails to report it to the police ("failure to give information") is punishable by imprisonment for up to seven years.

torney-General's view, was that the case was conducted in Tamil as well as being heard in the detainee's home area. Cases involving high-profile LTTE figures continued to be heard in Colombo.

The Attorney-General also pointed out that many of those arrested were released as a result of petitions to the Supreme Court for breach of the constitutional provisions on fundamental civil rights.

According to an international source wishing to remain anonymous, those remanded in custody could be held in prison for years without knowing when their case would come to trial. The source explained that detainees able to afford it could be released on bail, while others were released following a confession. The same source commented in general that it was hard to say whether the sluggish system was due to practical difficulties in dealing with cases or to the government's unwillingness to see cases swiftly dispatched.

Several sources made the point that the judicial system was slow-moving and people could be held on remand for years without having their case brought to court. The MIRJE commented here that those concerned were held on remand for at least a year, on average twelve to eighteen months.

The Family Rehabilitation Centre noted that remand in custody could range from three months to a number of years before a person's case came to trial. It knew of instances of remand in custody for four or five years.

The Institute of Human Rights pointed out that it was becoming commoner for police stations to bring people before a Magistrate's Court to be remanded in custody before questioning them. Some were released on bail after 40 days, while others could be held on remand for from one to three years before their case came to trial. Whether they continued to be detained depended more on the individual police officer than on the actual body of suspicion. The organisation commented in general that detention was often used to "neutralise" people, as it was hard to prove links with the LTTE.

3.1. Magistrate's Court proceedings

The general view among interviewees questioned was that remand in custody was regularly extended by Magistrates' Courts automatically, without the court actually assessing the grounds for detention. Several sources noted that remand in custody was often extended without the detainee appearing in person. One source pointed out that a few magistrates, including one Tamil, required the detainee to appear in person when extending remand, so that they could ascertain whether detainees had been subjected to any physical abuse or torture.

Lawyers for Human Rights, however, did not consider that remand in custody was extended automatically, a firm body of suspicion rather being required.

A lawyer, Mr Ponnambalam, knew of specific instances of the police not producing detainees after 21 days' detention. He also considered that in 90% of cases in Magistrates' Courts an application by the police for remand in custody would be granted. According to the same source, the average length of remand in custody was two and a half to three years.

INFORM noted that, owing to difficulties over powers of release, situations could arise in which someone to be released was held for months before the decision was in actual fact implemented. This was the case, for instance, where someone was first presented in court in Trincomalee but then transferred to Kalutara prison in Colombo. If the detainee had, technically speaking, been remanded in custody in Trincomalee, it could take months before the Attorney-General secured the release via that court.

Use of administrative detention

The Attorney-General explained that administrative detention under regulation 17 of the ER¹³ had largely ceased to be practised, as nearly all detention orders under that provision were immediately referred to the Supreme Court for infringement of fundamental civil rights. The courts attached so many conditions that it was impossible to get detention upheld. An international source wishing to remain anonymous confirmed that people were held in administrative detention not so much on crime prevention grounds, but rather on account of actual suspicion under section 9 of the PTA¹⁴.

According to the Ministry of Defence, however, as at 30 November 1998 there were 104 detainees under regulation 17 of the ER and 146 under section 9 of the PTA. These figures did not include those detained for a brief while.

A lawyer, Mr Ponnambalam, stated generally with regard to administrative detention on terrorism prevention grounds (regulation 17 of the ER) that detainees were deprived of ordinary legal safeguards. He pointed out here that the Presidential Directions on reporting to the HRC and informing relatives were generally not complied with in such cases, nor were lawyers able to look into cases. Lastly, he noted that Magistrates' Courts automatically upheld detention orders, often without the detainee appearing.

The MIRJE commented that lawyers generally had difficulty in gaining access to people held in administrative detention on terrorism prevention grounds (regulation 17 of the ER).

Length of administrative detention

People in administrative detention on suspicion of having committed a criminal offence under the PTA were, according to the Attorney-General, held for one month before being released or brought before a magistrate.

An international source wishing to remain anonymous thought it hard to comment on the average period of detention at the police questioning stage, but detainees would generally be held in police custody for about a month and then remanded in custody and transferred to the prison system. If the police saw any need for further interrogation by the Terrorist Investigation Department, administrative detention could extend for two or three months.

The same source pointed out that it was hard for the authorities to prove LTTE activity and people were therefore detained for lengthy periods, usually in administrative detention, where the authorities knew them to be working for the LTTE but could not prove it.

Detention was thus designed merely to put them out of action for a while.

¹³ Under regulation 17 of the ER, people may be held in administrative detention by order of the Minister for Defence on crime prevention grounds ("preventive detention"). Detention may be extended for three months at a time for up to one year.

¹⁴ Under section 9 of the PTA, the Minister for Defence may order the administrative detention of anyone suspected of being connected with or concerned in any offence under the PTA (LTTE activity). Detention may be ordered for three months and extended for up to 18 months.

A lawyer, Mr Ratnavel, commented that people were usually held in administrative detention on terrorism prevention grounds (regulation 17 of the ER) for two or three months. He knew of instances of administrative detention lasting for over six months.

Basis for detention (links with the LTTE)

The Attorney-General considered detainees in Kalutara prison all to be high-profile members of the LTTE movement. When asked whether he remained concerned at many people being detained for lengthy periods without having their cases heard, he explained that, in order to prevent this, the prisons had been contacted and a member of his staff had been visiting prisons regularly to monitor conditions. This arrangement had, however, been discontinued for security reasons on account of the attack on a Tamil EPDP member of parliament, Mr Devanandan, who was very seriously injured by Tamil prison inmates.

An international source wishing to remain anonymous believed some of those held on remand to be high-profile figures (fighters). In other cases the extent of their links with the LTTE was not known with any certainty; they might have been accessories or informants. The source took the view, moreover, that the majority of detainees had no links with the LTTE.

The Institute of Human Rights commented that the detainees included both people with LTTE links and innocent parties. High-profile LTTE military figures were detained at Kalutara prison, but there were few prisoners taken in combat as they either fled or were killed. The source noted as a feature of the conflict that neither side held many prisoners of war. Some people were convicted under section 5 of the PTA (failure to give information), which was usually a sign of no evidence of LTTE links.

The Centre for the Study of Human Rights said that there were people with LTTE links in prison, pointing here to the attack on the member of parliament, Mr Devanandan, at Kalutara prison. Innocent parties were also detained, however, being held for up to six months or more.

The Association for the Protection of Tamils took the view that there were innocent people in Kalutara prison. The Action Group for Tamils believed 99% of those held on remand to be innocent. A lawyer, Mr Ponnambalam, considered that, of the 700 remand prisoners in Kalutara, only 10 to 15 were high-profile LTTE figures.

3.2. High Court proceedings

It was explained that there were seven High Courts in Colombo. They usually heard four cases a day, making about 30 cases a day heard in Colombo. Many cases were heard over a number of sittings.

A number of interviewees, including the Institute of Human Rights and the lawyer, Mr Ponnambalam, took the view that High Court proceedings were fair and the judges could be regarded as independent. The same sources pointed out here that the courts often ruled confessions inadmissible on the grounds that they had been improperly obtained, e.g. by means of torture.

Sentencing

It is difficult to form an overall picture of sentencing in LTTE-related cases and the delegation was unable to obtain any statistics on the details of and basis for sentences.

The Attorney-General found it hard to comment in general on sentencing in ER/PTA cases, since it all depended on the individual case. According to him, low-profile figures could generally be said to receive lenient sentences, with heavy sentences only being imposed where violence was involved.

The Institute of Human Rights noted that the maximum sentence for failure to give information under section 5 of the PTA¹⁵ was seven years, but it did not know of any seven-year sentences under that provision. Those concerned might, however, be detained for a year or two while the case was pending, following which it would often end in a fairly small fine.

Several sources pointed out that people were convicted of failure to give information (about the LTTE) under the PTA, which might be a sign of no evidence of LTTE links. A lawyer, Mr Ratnavel, made the point here that many people admitted a minor offence in order to get the case heard in the High Court. In his view, 60% of those remanded in custody admitted failing to give information (about the LTTE) for that reason.

A number of interviewees noted that, owing to the lengthy period of remand in custody, many people were released on being sentenced, as the court would deduct time spent on remand.

Reporting requirement when released on bail

There are no set rules as to cases in which a reporting requirement is imposed on those released.

Several interviewees, including the Attorney-General, said that a reporting requirement was imposed only in cases in which people were released on bail. The Attorney-General added that only the courts could decide to impose a reporting requirement. He went on to explain that the requirement imposed was to report to the local police station, usually once a month.

A number of sources, including the Institute of Human Rights and the lawyer, Mr Ratnavel, made the general point that those detained under the PTA could not be released on bail. Those detained under the Emergency Regulations could be released on bail after being held for three months.

Lawyers for Human Rights explained that a reporting requirement would be imposed only on those released on bail by a Magistrate's Court after being detained under the ER. The same source pointed out that they might face arrest, on failing to turn up, if regarded as posing a threat to security.

A lawyer, Mr Ponnambalam, could not give any details as to cases in which those released were required to report to the police, as that depended on a specific assessment. He added that no reporting requirement was imposed on those released by the High Court. According to him, whether any further action was taken on failure to comply with the reporting requirement was also a matter for specific assessment. In general he said that anyone known to the police might face detention.

3.3. Incidence of torture

All independent interviewees considered there not to be any serious violence or torture during detention for identity checks. See also the subsection on identity checks in the section on the security situation in Colombo.

¹⁵ See footnote 12.

The Ministry of Defence said that 99% of its personnel were disciplined and did not practise torture or maltreatment.

Several sources took the view that torture and maltreatment might be used on those suspected of working for the LTTE, if subjected to an actual interrogation process.

Interviewees generally agreed that torture was not practised in the prison system proper. INFORM added that Tamils in the prisons complained of suffering violence and discrimination at the hands of prison warders or other prisoners. The source pointed out here that three prisoners had been killed at Kalutara prison the previous year.

The Institute of Human Rights noted that torture was practised in military camps and at police stations. Torture was not used systematically; it depended on the time and place of detention. The same source considered torture and maltreatment to be less common in Colombo. An international source wishing to remain anonymous commented that physical violence ranging from blows to torture occurred in just under half of all cases.

The Family Rehabilitation Centre said that torture was widely practised at police stations and in detention centres and military camps. According to the same source, the holding of those remanded in custody for long periods without any actual charges being brought had traumatic effects.

An international source wishing to remain anonymous stated generally that torture was particularly prevalent during detention by the army in the northern parts of the country, including Jaffna.

The Family Rehabilitation Centre reported that the PLOTE and the EPRLF practised torture in the war zones.

Several sources pointed out that common-law criminals were also subjected to serious violence and torture. They commented that torture and violence were commonly used by Sri Lankan police and armed forces in a hurry to extract information from detainees.

The Family Rehabilitation Centre was receiving fewer complaints of torture but could not say that it was being less widely practised. It had heard that torture victims were intimidated into not complaining and torture could also take more sophisticated forms not leaving any trace. The Centre trained doctors in detecting various kinds of torture, e.g. beating on the soles of the feet, rubbing chili powder into the body, sexual abuse, forced inhalation of petrol fumes and submersion of the head in water.

The Law and Society Trust also noted that it was harder to ascertain the use of torture as it was being practised in more sophisticated ways leaving no physical trace.

The Institute of Human Rights made the point that those subjected to torture would usually receive a medical certificate for the purposes of treatment and any compensation payable, but this would not directly show that the injuries were the result of torture.

A number of interviewees reported the prisons generally to be overcrowded. The Action Group for Tamils knew of instances of Tamils being held in cells along with prostitutes and criminals, with so little room that inmates were forced to remain standing. The Centre for the Study of Human Rights described prison conditions as being "as good or as bad as in any other developing country".

3.4. Petitions to the Supreme Court for infringement of fundamental civil rights

The Attorney-General explained that an action for infringement of fundamental civil rights could be brought immediately upon arrest and in his view such actions were often brought in order to secure the detainee's release. Where the Supreme Court was petitioned, the case was referred to the Attorney-General, who ordered the person's release if there were no grounds for detention. The petition to the Supreme Court was then withdrawn. In practice there were only a few cases in which the Attorney-General did not order the detainee's release and those cases involved serious suspicion of LTTE activity.

The Attorney-General reported 70 such cases to have been heard by the Supreme Court in 1997 and 144 in 1998, a number of them still pending. In some cases the Supreme Court had found breaches of fundamental civil rights in the form of unlawful detention or torture and awarded the detainee compensation.

The Civil Rights Movement is compiling information from the Supreme Court concerning fundamental civil rights and there were around 1 000 petitions in 1997, alleging infringement of fundamental civil rights generally. The bulk of them concerned unlawful arrest and torture but there were also cases of unlawful dismissal etc. The vast majority of cases were settled out of court and the detainee then released. Cases usually took from one to two years but *prima facie* cases would be dealt with more speedily, reducing the time taken to a year. Torture cases were not specially expedited, on the grounds that the harm had been done.

The Centre for the Study of Human Rights noted that many petitions to the Supreme Court for infringement of fundamental civil rights were based on torture. By law, petitions had to be lodged within one month of the offence, but it was the Supreme Court's established practice to allow petitions to be lodged within one month of the person actually being able to complain, e.g. upon release. According to the same source, application of this legal safeguard was hampered by torture victims' inability to afford a lawyer, there being insufficient scope for free legal aid.

Several sources pointed out that the possibility of bringing an action for infringement of fundamental civil rights could in practice be impeded where a Magistrate's Court regularly extended remand in custody. The reason was that an action could be brought before the Supreme Court only where no date had been set for the next hearing in the Magistrate's Court.

According to the Family Rehabilitation Centre, the Supreme Court was more widely looking into complaints regarding infringement of fundamental civil rights and had begun, in its rulings, naming the officer responsible for torture and recommending disciplinary action against that officer. According to the same source, such rulings had not resulted in prosecution of those responsible. It gained the impression that their promotion prospects were affected, but was unable to give any specific examples.

Lawyers for Human Rights had come across instances of the Supreme Court awarding torture victims compensation and mentioned one case in which the victim had a lung removed as a result of torture inflicted. The same source considered that the Supreme Court's recommendations for disciplinary action could lead to the person responsible missing out on promotion, for a year. It had no knowledge of prosecution in response to Supreme Court rulings.

In 1997 a lawyer, Mr Ponnambalam, had lodged 117 petitions with the Supreme Court, alleging infringement of fundamental civil rights. He generally considered Supreme Court proceedings to be fair and judges independent.

As to whether Supreme Court rulings acted as a deterrent to the use of torture by the security forces, the Family Rehabilitation Centre replied that they did to some extent, but that there was a need for greater publicity and debate on the subject. The Centre for the Study of Human Rights also considered petitions to the Supreme Court to act as a deterrent to police use of torture.

The Law and Society Trust, on the other hand, did not think that Supreme Court judgments concerning breaches of the ban on torture acted as a deterrent.

3.5. Disappearances and killings whilst in the custody of the authorities or Tamil groups

An international source wishing to remain anonymous commented that the number of disappearances in 1998 was not large, being considerably lower than in 1996 and 1997.

The Law and Society Trust noted that Sri Lanka had an extremely high number of disappearances in the 1990s, although the number was far lower nowadays, but disappearances and killings while in the authorities' custody did still occur.

A number of interviewees, including the Centre for the Study of Human Rights and the Civil Rights Movement, considered there not at present to be any cases of disappearances, pointing out that they had not recently received any reports of such from Amnesty International.

The MIRJE stated that there were people who disappeared in police or military custody before being either placed in administrative detention or remanded in custody.

Several sources reported cases of extrajudicial execution. A lawyer, Mr Ratnavel, commented that unrecorded extrajudicial executions in police custody took place in the east of the country. The MIRJE had heard reports of some prisoners being killed but could not confirm this.

Several sources, including an international source wishing to remain anonymous, the MIRJE and the Action Group for Tamils, did not believe there to be any cases of disappearances and extrajudicial executions in Colombo.

The lawyer, Mr Ratnavel, considered the situation probably to have improved in Jaffna, pointing out that he was unaware of any disappearance cases in 1998.

According to the same source, extrajudicial executions did occur, albeit on a limited scale, in both Colombo and Mannar.

The MIRJE pointed out that there were cases of people in the authorities' custody being killed in both the north and the east; it mentioned two 1998 cases from Eastern Province in which the victims were being held at military camps.

Several sources, including Lawyers for Human Rights and the Action Group for Tamils, reported disappearances in Jaffna and Batticaloa.

3.6. Unofficial detention centres

An international source wishing to remain anonymous did not know of any such centres in Colombo but could not rule out the possibility of their existence. According to the source's information, moreover, there were no disappearances in Colombo.

Several Sri Lankan NGOs and a lawyer, Mr Ponnambalam, likewise stated that there were no unofficial detention centres in Colombo.

The Action Group for Tamils did consider there to be unofficial detention centres in Colombo and pointed to a former office block by the air-force camp near the Trans Asia Hotel, where people were held for interrogation for over 24 hours.

An international source wishing to remain anonymous had heard from reliable sources that the PLOTE ran unofficial detention centres in Vavuniya, where its main stronghold lay.

The Institute for Human Rights and the Centre for the Study of Human Rights commented that there were probably such centres in northern and eastern areas, it being common knowledge according to the first source that people were unlawfully detained at military camps in those areas. The Law and Society Trust likewise considered there to be unofficial military detention centres in the north and the east.

The Family Rehabilitation Centre reported their existence in Vavuniya and Batticaloa, where both the PLOTE and the TELO ran detention centres.

The Civil Rights Movement said that the PLOTE ran detention centres in Vavuniya.

4. Investigation and prosecution by the authorities in cases in which members of the authorities are suspected of human rights violations

The question of prosecution of members of the security forces was discussed with the Attorney-General, who pointed to the Krishanthi case, in which those responsible were sentenced to death on 3 July 1998. The case concerned the rape and murder of Krishanthi Kumaraswamy in Jaffna on 7 September 1996, at a checkpoint manned by military personnel, and the subsequent murder of three relatives. The Attorney-General made the point that the case had been transferred from Jaffna to Colombo High Court, where it was conducted under a special procedure, trial at bar, under which it was heard swiftly by three High Court judges. It should be noted that the sentences had not been carried out.

A number of cases pending (or completed) involving prosecution of members of the security forces were then discussed. See the Attorney-General's report to the delegation on the individual cases, in Annex 7. Those legal cases were also covered by the 1997 fact-finding mission; see the April 1997 Sri Lanka report, Annex 13, giving the Attorney-General's written report of action taken in the cases.

The Attorney-General reported that, apart from the Krishanthi case, none of the cases in question had been closed. He attributed the long time taken by them mainly to practical problems, including difficulties experienced by the authorities in reaching the relevant areas in the north and east of the country as well as in tracing important witnesses. He also pointed out that cases could drag on as a result of the need to have statements, etc. translated and that defendants were availing themselves of legal safeguards, which lengthened the time taken by cases.

The Attorney-General explained that the Mailantenne case hinged on unawareness of the whereabouts of important witnesses, who had left refugee camps. The authorities were attempting to locate them and the trial was due to begin on 17 March 1999. In another case, the Embilipitiya case, defence counsel were in the eighth month of pleadings. According to the Attorney-General, the case was in its latter stages and would probably be completed at the end of the year. In the floating bodies case, he had sent an indictment to the court in Colombo.

The Attorney-General added overall that in each of the cases in question those accused had been suspended from duty.

Apart from the Krishanthi case, in which those responsible had been sentenced to death, several sources, including the lawyer, Mr Ponnambalam, and the Institute of Human Rights, were unaware of any other cases in which members of the security forces had been prosecuted. The Institute of Human Rights said that the floating bodies case was still pending and it believed those responsible to have been released on bail.

The UNHCR pointed out generally as regards prosecution of members of the authorities for human rights violations that reports of disappearances were passed to the President, but the authorities could still not be said to be taking the necessary legal steps to prosecute such offences. The UNHCR also referred to the Krishanthi case as one of the very few instances of prosecution through the courts. It said that there were examples of members of the armed forces in Jaffna being imprisoned, with the authorities claiming to have taken disciplinary action. Apart from that, the UNHCR was unaware of any cases in which members of the security forces had been punished.

An international source wishing to remain anonymous commented here that inquiries were carried out and steps taken against the authorities' own personnel, but mainly for acts committed under the previous government (prior to 1994). Apart from the Krishanthi case, one particular instance in Batticaloa and a few disciplinary cases in Jaffna, acts committed under the present government went unprosecuted. The same source pointed to improvements in conditions at military camps in Jaffna, where there had previously been many accusations of rape in particular.

The Centre for the Study of Human Rights commented regarding such cases that investigations could drag on for years, partly on account of difficulty in identifying victims, and there might also be a need to call on foreign expertise.

The Law and Society Trust stated in general that serious human rights violations enjoyed impunity.

The Family Rehabilitation Centre was not aware of judicial charges having been brought against any members of the authorities in response to a Supreme Court finding of torture. It had the impression that their promotion prospects could be affected but was unable to give any specific examples.

Lawyers for Human Rights noted that Supreme Court rulings on infringement of fundamental civil rights did not serve as a sufficient deterrent precisely because no further disciplinary action was taken. The source also referred to the regional Commissions set up in 1994 to inquire into serious human rights violations committed while the UNP was in government (see below). They had reported to parliament, but there were still no steps taken to bring prosecutions.

Commissions of Inquiry into Involuntary Removal and Disappearances

Three Commissions were set up by the Sri Lankan government in January 1995 to look into disappearances reported to have taken place since January 1988. Each Commission had jurisdiction over a particular geographical area: north-eastern, central and south-western Sri Lanka respectively. The Commissions concerned abuses committed while the UNP was in government and their term of office expired on 31 May 1997. They submitted interim reports to the President, naming those allegedly responsible for disappearances. The President's office then forwarded those reports to the At-

torney-General for consideration of the possibility of bringing charges. The Commissions' final reports were submitted to the President on 3 September 1997¹⁶.

The delegation learned from the Daily News on 4 December 1998 that the Attorney-General intended to charge over 100 members of the security forces under the UNP regime with disappearances in the light of the above reports from the three Commissions of Inquiry into Involuntary Removal and Disappearances. According to the newspaper article, the Attorney-General had already charged 28 people.

Chemmani graves

During the above Krishanthi Kumaraswamy case, the defendants reported there to be some mass graves near Chemmani, containing 400 bodies.

Opposition politicians from the TULF, from the EPRLF and from the PLOTE as well as a number of human rights groups then demanded that the government look into those accusations. In the light of this, Human Rights Commissioner Suntheralingam made inquiries, including questioning of the main suspect in the Chemmani case, from which he concluded that further inquiries should be conducted in Jaffna¹⁷.

A number of interviewees queried whether the government was really investigating the Chemmani accusations. An international source wishing to remain anonymous knew that the HRC had approached Amnesty International and the UN Commission on Human Rights in Geneva, seeking assistance, but no actual government decision to conduct inquiries in the area had been taken. Lawyers for Human Rights considered the government to be dragging its heels, owing to the sensitivity of the case. The Action Group for Tamils also believed the authorities to be dragging their heels and thought this regrettable, as there were now rumours abroad that the armed forces were busy removing evidence.

E. Human Rights Commission

Establishment and membership

The Human Rights Commission's terms of reference were laid down in Act No 21 of August 1996, which came into force on 17 March 1997 by presidential order. See Annex 8. The HRC supersedes the Human Rights Task Force, which was disbanded on 30 June 1997, with the HRC then taking up work on 1 July 1997.

The Commission is headed by a retired Supreme Court judge, Mr O.S.M. Seneviratne. Its other members are: Dr A.T. Ariyaratne, head of Sarvodaya (a humanitarian NGO); Prof. Arjuna Aluwihare, former chairman of the University Grants Commission; Mr T. Suntheralingam, a retired High Court judge; and Mr Ahmed Javid Yusuf, a former Sri Lankan ambassador to Saudi Arabia. The Commission is composed of three Sinhalese, one Tamil and one Muslim¹⁸.

¹⁶ Report of 12 March 1998 by the UN special rapporteur on human rights, Mr Bacre Waly Ndiaye, page 26.

¹⁷ See INFORM's July 1998 situation report.

¹⁸ Report of 12 March 1998 by the UN special rapporteur on human rights, Mr Bacre Waly Ndiaye, page 24. See also Annex 9.

The HRC's main task is to monitor compliance with the guidelines for arrest and detention under the emergency legislation and check that detainees do not suffer abuses. The HRC is also to visit the various detention centres without notice, as well as having to investigate disappearances. In addition the HRC has a more general role in promoting respect for human rights. This involves human rights education, advising the government on legislative action to promote human rights and recommending steps to implement international commitments.

Staffing

Commissioner Suntheralingam pointed out that, apart from its leadership, the entire staff of the HRTF was taken over into the HRC, which had a workforce of 90 to 100, including five Commissioners and a secretariat of 26 investigators, six in Colombo and two in each regional office, plus office staff.

The Centre for the Study of Human Rights was aware that 84 of the HRTF's staff had been transferred to the HRC, all except its head and a few others being taken over in this way. An international source wishing to remain anonymous also pointed out that many of the HRTF's staff had moved to the HRC, but some later resigned.

All interviewees questioned considered the new leadership a key reason for the organisation's ineffectiveness and inability to make its mark. Sources generally saw the new leadership as displaying a lack of resolve and interest when it came to reporting individual cases. As an international source wishing to remain anonymous put it, the Commission's head was selected to ensure minimum action. Another source wishing to remain anonymous similarly stated that the head stood in the way of cases being taken up and, for instance, reported to the President.

The MIRJE commented that the Commission consisted of committed, dynamic members, but its leadership posed a problem.

A lawyer, Mr Ponnambalam, observed in general that the HRTF's work had been cut short midway, as the government did not want work on safeguarding detainees' rights to continue, the HRC being vested with formal powers only.

Action taken in individual cases, including resources available

The delegation held a meeting with Commissioner Suntheralingam, who commented generally that the Commission was short of resources, but its staff were doing a good job. He noted with regret that it was not possible to take sufficient action in cases involving abuses and the HRC had been forced to leave torture cases to be dealt with by NGOs for lack of resources.

All sources questioned pointed out that the HRC had been given broader terms of reference than the HRTF, which focused more closely on conditions for those detained under the ER/PTA.

Many independent sources generally expressed disappointment and frustration at the HRC's work. Sources on the whole took the view that the former HRTF, whilst not perfect, did a considerably better job. The HRC was more bureaucratic, e.g. only being contactable between 8 a.m. and 4 p.m. The Law and Society Trust was dissatisfied at the time taken by the HRC to deal with cases, adding that the Commission's overall effectiveness was open to doubt. The Centre for the Study of Human Rights commented that the HRC was not operating satisfactorily.

An international source wishing to remain anonymous remarked that the establishment of the HRC was a good move in principle, but in practice the Commission received little support in its work from the government. The source pointed out here that the HRC was short of resources, including vehicles and other logistical equipment. In the source's view, the real desire of the leadership to change conditions for detainees was open to question. The source also took the view that, having many years' experience, the HRTF worked better and no-one could understand why the HRTF should be replaced by the HRC.

Several sources pointed out that the HRC could be used to locate a detainee but did not take any further action of its own in cases to secure people's release. INFORM observed that, unlike the HRTF, the HRC did not intervene when it became aware of unlawful arrests, use of violence or torture. According to the same organisations, the HRC merely made a report, which could take a full week in specific cases, and was therefore no use. The Institute of Human Rights considered that some further action was taken in individual cases, but this did not prove effective.

The Association for the Protection of Tamils did not turn to the HRC in specific cases, but rather itself approached the detaining police force, as making use of the HRC took too long. The MIRJE described the usual course followed in tracing someone, whereby the detainee's relatives would approach a human rights organisation or the ICRC and the latter would then trace the detainee in the authorities' custody. The HRC would afterwards be informed either directly by the ICRC or by the human rights organisation involved.

The Law and Society Trust had complained to the HRC in two cases, one of them concerning mass arrests and the other an individual instance of a woman unable to obtain permission to fetch her dead child for burial. In the first case the HRC protested to the police force, which subsequently agreed to change its procedures. In the second case there was no reaction from the HRC.

Lawyers for Human Rights had approached the HRC on a number of occasions and received a swift response. The source considered that the HRC had begun to operate more effectively during 1998.

1. Performance by the Human Rights Commission (HRC) of its task of inspecting police stations and prisons

Commissioner Suntheralingam reported that the HRC attempted to visit official detention centres on a regular basis. For the last two or three months, however, the HRC had not carried out such monitoring as it was generally short of resources. The Commission considered that with six investigators in Colombo it could cover 25 detention centres, but there were around 75 of them. He added that the HRC had met with problems in being allowed free access to detention centres, since the police and the armed forces would only cooperate to some extent. The situation had, however, improved of late.

All independent sources took the view that the HRC did not carry out constant monitoring of detention centres and prisons as required by its terms of reference.

The UNHCR commented that the HRC made a very limited number of visits to prisons and detention centres.

The MIRJE stated that the HRC did not monitor detention centres of its own accord and had difficulty in gaining admittance to detention centres, including police stations, but sometimes gave shortage of staff as an excuse for inadequate monitoring. In one specific case it took four hours to decide to trace someone. The MIRJE reported that it had not encountered such problems with the HRTF.

A lawyer, Mr Ponnambalam, considered that the HRC did visit detention centres but did not take any further action as a result.

2. HRC monitoring of implementation by the security forces of the guidelines laid down for them

For an account of the Presidential Directions, see the section on legal safeguards and Annex 6.

Several sources concurred in the view that no members of the security forces had been prosecuted at the HRC's instigation, e.g. for failure to comply with the Presidential Directions. The Law and Society Trust pointed to a general problem of the HRC not using its authority to recommend that action be taken against members of the authorities guilty of abuses. The Civil Rights Movement said that it had tried unsuccessfully to get the HRC to prosecute police officers failing to issue detainees' relatives an acknowledgement.

3. Publication by the HRC of reports on its work

Commissioner Suntheralingam regretted the fact that the Commission did not produce public reports.

The MIRJE pointed out that, owing to inadequate monitoring, the HRC could not produce any statistics concerning detainees.

The UNHCR found it regrettable that the HRC did not produce any public statistics or reports on conditions for those detained under the ER/PTA, it being the only organisation in a position to do so.

4. The HRC's role locally outside Colombo

Commissioner Suntheralingam pointed out that, in addition to its head office in Colombo, the HRC had ten regional offices in Kandy, Matara, Batticaloa, Anuradhapura, Trincomalee, Vavuniya, Badulla, Amparai, Kalmunai and Jaffna respectively. See Annex 10 for the HRC's own list of addresses of local offices and names of regional coordinators. The Jaffna office was opened in January 1998 and there were also plans to open an office in Mannar.

On the question of local office capability, an international source wishing to remain anonymous was aware of the Vavuniya office having taken up some cases, including securing the release of Tamils and helping people return to Jaffna, but said that work could proceed far better. The same source pointed out that few civilians approached the HRC. In Jaffna the local office was supposed to look into the number of disappearances, but people did not report to the Commission with complaints. The Civil Rights Movement also commented that the HRC's local office in Jaffna did not follow up specific cases.

The Centre for the Study of Human Rights observed that the Jaffna office was not acting as a legal safeguard for detainees in the area. It saw a problem in the lack of decentralisation of the Commission's work. The regional offices thus had to refer to head office in Colombo before they could act.

Lawyers for Human Rights, on the other hand, considered that regional offices could take up cases of their own accord, without seeking permission from head office in Colombo.

INFORM pointed out here that the regional offices in Batticaloa, Trincomalee and Vavuniya did not know whether they were allowed to intervene and did not receive sufficient backing for their work from the leadership in Colombo. The former head of the HRTF, in comparison, personally approached the local authorities and in that way supported the HRTF's local staff. The same source reported that the HRC's local office in Jaffna had called in the police in response to a demonstration

concerning the Chemmani graves, a move not calculated to inspire confidence in the Commission's work among the civilian population.

Presidential Committee on Unlawful Arrest and Harassment (Anti-Harassment Committee)

Establishment and membership

The Anti-Harassment Committee (AHC) was set up by presidential order of 10 July 1998. It is composed of five ministers¹⁹ and three members of parliament²⁰. The Committee held its first meeting on 12 July 1998.

The AHC's terms of reference include receiving complaints of unlawful arrest and harassment by members of the security forces, but it has no authority to intervene as regards release.

AHC members meet once a week (every Monday), with four permanent representatives of the security forces, known as "coordinating officers", also attending. The police, the army, the navy and the air force are represented. The Committee has a secretariat of three, looking after its day-to-day business. The secretariat comes under the Ministry of Justice. The delegation was given a chart showing complaints received by the AHC from 12 July to 15 November 1998, attached as Annex 11.

The Attorney-General made the point that anyone could approach the Committee, whose address was made public at the time it was set up. When the secretariat received a complaint, the secretarial staff approached the relevant member of the security forces, who drew up a report to the Committee. The case was then referred to Committee members, who in considering the case could request the officer in charge of the police district concerned to appear before the Committee. Where the members did not consider there to be any grounds for detention, the Attorney-General was contacted and ordered the person's release. The Attorney-General reported that a sizeable number of detainees were released in this way. He added that the Committee was working on standardisation of registration requirements.

Human Rights Commissioner Suntheralingam made the point that one of the AHC's strengths was having attached to it a retired police officer, who maintained a network of contacts at police stations.

Several sources, including INFORM and an international source wishing to remain anonymous, pointed out that the AHC was set up in response to criticism of the HRC's ineffectiveness.

The UNHCR had no knowledge of the Committee's specific action but was aware of it having taken steps in a number of fields. In the UNHCR's view, it was hard to say whether the decrease in the number of detainees was due to the influence of the Committee, the press or other parties, e.g. the TULF.

¹⁹ Its Chairman, Lakshman Jayakody, Minister for Buddha Sasana;
D.M.S.B. Dissanayake, Minister for Samurdhi, Youth Affairs and Sport;
G.L. Peiris, Minister for Justice;
Lakshman Kadiragamer, Minister for Foreign Affairs;
B. Weerakoon, Minister for Science and Technology.

²⁰ Douglas Devananda, EPDP;
Sampahanathan, TULF;
M.M. Zuhair, SLMC.

An international source wishing to remain anonymous was not confident that the AHC would go very far. The source generally saw a tendency to set up new committees when a problem arose and then lose sight of the problem again.

The Civil Rights Movement had not heard of the Committee's work recently but said that there were newspaper reports of the Committee having raised cases. The same source did not believe the Committee actually to take any further action in the cases.

The MIRJE remarked that the AHC had been established in response to criticism of the HRC. At first the Committee was very active, but the source was sceptical as to whether it really had the resources and authority to intervene.

Lawyers for Human Rights and the Law and Society Trust stated that the AHC was acting as a deterrent.

The Institute of Human Rights generally did not consider the AHC to have made any significant impact on the situation, but did point out that the number of mass arrests had decreased, which might possibly be attributable to the Committee's work.

The Centre for the Study of Human Rights observed that the AHC had been given narrow terms of reference as regards arrested persons. The source regarded the actual existence of the Committee as a positive feature and thought that the police and armed forces were more widely complying with the rules. It added, however, that the Committee, being composed of ministers and members of parliament, would be hard for the general public to avail themselves of.

III. Possibility of travel from the northern and eastern regions to Colombo and vice versa

1. Restrictions on leaving LTTE-controlled territory for government-controlled territory

The crossing-point between uncleared and cleared areas is to be found in Poovarasaskumal and Uylankulam on the Vavuniya-Mannar Road. Both the LTTE and the authorities carry out checks on travellers at this crossing-point. Authorisation is needed to travel from Mannar to Vavuniya and from Vavuniya to Colombo.

All interviewees stated that permission from the LTTE had to be obtained in order to leave LTTE-controlled territory. Many interviewees further stated that a certain amount of money is always paid to the LTTE to obtain such permission. The size of the amount depends on the individual case.

An international source wishing to remain anonymous stated that the LTTE had laid down a special screening procedure for persons wishing to leave the area. The source stated that as a rule the LTTE only allows people to leave the area for business purposes or the like in government-controlled areas. However, according to the source there was no fixed procedure.

Several interviewees said they had heard that the LTTE often required that at least one family member should stay behind to ensure that the person in question actually returned after the authorisation had expired. However, none of those interviewed actually knew this to have been the case.

Home for Human Rights stated that the LTTE had the same pass systems as the authorities and that permission to leave LTTE areas could be granted to visit one's family, for example. It added that high-profile members were not allowed to leave the area.

The MIRJE said that as a rule only low-profile LTTE-members obtained permission to leave the area.

INFORM stated that young Tamil men were particularly exposed to pressure from the LTTE and that they could not easily obtain an exit authorisation from the LTTE. INFORM further stated that 95% of those asking to leave the LTTE-controlled area did so because of the war.

Possibility of leaving the LTTE-controlled area without permission

All those interviewed stated that it would be particularly hard to leave the area without the knowledge and permission of the LTTE. The Institute of Human Rights added that the LTTE had resources to control exit from the area.

The UNHCR stated that it was a known fact that some persons, especially asylum-seekers, stated that they had reached the areas controlled by the authorities by circumventing the LTTE controls. It added, however, that this involved only a small number of people. The UNHCR attributed this partly to high morale within the LTTE's own ranks and partly to the safety of those family members who stayed behind. The UNHCR emphasised that this was only an unconfirmed rumour.

An international source wishing to remain anonymous stressed that even where a person evaded the LTTE controls, that person still had to go through the army-held area, which was risky, especially at night.

Another international source also wishing to remain anonymous estimated that there was some degree of escape/desertion from the LTTE-controlled area but that this involved only a very small number of people in view of the risks involved. The source stated that even where the LTTE controls were evaded, both the army and a number of paramilitary movements, (including the PLOTE and the TELO), could be found in the area controlled by the authorities and that they would try to use the LTTE deserters as informants. The source further estimated that those fleeing from the area would not typically be the LTTE cadres but rather the civil population.

2. Arrangements for controlling travel to and from Colombo

Stay in the Vavuniya/Welfare centres

Welfare centres for internally displaced refugees have been set up in Vavuniya and in Mannar. The camps are run by the authorities with the support of various international NGOs and UN agencies. Several interviewees stated that there are between 10 and 11 000 persons in and around the camps in Vavuniya but that numbers are generally falling as many try to return to their home areas. There are 12 camps, one of which operates as a screening camp which those concerned have to go through upon arrival in Vavuniya. After screening, people are spread over the other camps. All those arriving at the camps are subjected to thorough security controls.

An international source wishing to remain anonymous stated that the conditions in the camps were very basic. The camps used to be very overcrowded but many people have returned to Jaffna so that there are no longer any major problems in acquiring water, food, medicines and such. The source stated that there were fewer complaints from people about exposure to harassment in the camps, which was probably due to the fact that there were no longer so many people in the camps. Some remain stuck in the camps – unfortunately so, as the environment is a breeding-ground for Tamil movements. The source stated that there had been examples of the arrest of Tamils and Tamil groups by the government on suspicion of involvement in the LTTE activities.

The source added that conditions in the camps depended on the general security situation in the area. The situation in January/February 1998 was more tense because of the bomb attack in Kandy and at that time people could only get permission to leave the camps for a few hours. At present conditions are less tense and permission may be obtained to leave the camps in the evening and to come back the following day. The source had not recently received any complaints regarding this matter.

Another international source wishing to remain anonymous stated that conditions in the camps were not good. Police guard the entrances, while leaving the camps requires prior permission from the authorities. The source stated that many like to leave the camp to go and work, which is difficult, as they are only given permission to leave for three to four hours. Moreover, permission to leave the camps is in principle granted only to those doing business or who need to consult a doctor.

According to an international source wishing to remain anonymous the humanitarian situation in the camps is very poor.

Mr Ratnavel, a lawyer, generally commented that they were referred to as welfare camps although in reality those concerned did not want to be in them. He further stated that those in question can obtain permission to go to Vavuniya for one to three days with a possible extension if they are on business or such. Mr Ratnavel further stated that there were many restrictions on freedom of movement for camp inmates but added that there are no problems for those residing permanently in Vavuniya. In addition, relatives may receive a three-month pass with a possibility of multiple renewal.

Possibility of travel to Colombo (screening camps)

Anyone wishing to travel to or to stay in Colombo must apply for this to the authorities in Vavuniya and in the first instance to the police. There are clear guidelines laying down in which cases an application can be met. Reference should be had to Annex 12. Where the police has doubts whether an application should or should not be met the issue is settled by a committee specially set up for that purpose. The committee consists of members of parliament, politicians, representatives of the army, the police and of the civil administration.

In general, all of the sources interviewed remarked that there should be good grounds for receiving permission to travel to Colombo, i.e. typically visits to a doctor or a hospital, business, studies, family reunion or documentation for planned departures.

An international source wishing to remain anonymous stated that it is not necessary for a family in Colombo to come to Vavuniya to vouch for the person in question.

The MIRJE stated that it was very difficult to get through the screening camps in Vavuniya and that in some cases there was the requirement that family members should guarantee that the person return.

Mr Ratnavel stated that it is easier to receive permission to travel to Colombo with a fixed domicile in Vavuniya. Mr Ratnavel furthermore felt that the authorities kept a particularly watchful eye on young Tamils.

Permission to travel to Colombo is in most cases restricted in time. The various interviewees gave varying information on the length of the authorisation normally issued although it was generally thought that validity depended on the purpose of the trip to Colombo, including the person's connection with Colombo.

There was furthermore widely differing information on the length of time required to have an authorisation issued. Interviewees generally took the view that the lengthy processing time was in itself a problem. The time involved could range from a few days to a year. The Institute of Rights stated in this connection that many are detained in refugee camps even where the authorities have received all relevant information. Another source wishing to remain anonymous stated that it was a known fact that some people had been kept in camps for up to two years even if they had a family in Colombo. In general many interviewees stated that much could be achieved with money and that permission could therefore be obtained to travel to Colombo even if one did not have any family, a job or documents for a planned departure. The size of the amount depended on the actual situation, including where the person came from in Sri Lanka. According to Home for Human Rights some people had paid up to 60 000 rupees (some 6 000 Danish kroner) to receive permission to travel to Colombo.

Restrictions on permission to travel from south to north

The Ministry of Defence generally described restrictions on travel to Jaffna as a transport problem and pointed out that after the shooting down of a private plane in September 1998 and the attack on a merchant ship bringing back military troops to Trincomalee in September 1998 there was no civilian road route to Jaffna.

Many sources informed the delegation that there is some maritime traffic at night on the eastern coast but that on the whole the route is closed.

The Ministry of Defence stated that civilians can travel to eastern areas without permission.

Permission to travel to Jaffna

The Ministry of Defence stated that its permission is needed for travelling to Jaffna and that anyone with good grounds receives such permission. This could involve requests to take part in religious festivals, to visit family or some such.

The Ministry of Defence stated that there are no restrictions on travel between Vavuniya and Colombo, Colombo and Batticaloa and between Colombo and Trincomalee.

Member of Parliament (TULF member) Neelan Thiruchelvam stated that 2 500 persons are waiting in Jaffna to go to Trincomalee and beyond, while 3 500 are waiting in Trincomalee to come to Jaffna. The road between Habaran and Trincomalee is closed at night.

The ICRC ship which sails once a week leaves Point Pedro for Trincomalee with patients in need of special treatment (given the lack of special wards in Jaffna). It also transports people who have to be reunited with their families and who have been separated because of the war. There are furthermore doctors, government representatives and others holding important functions. It also transports persons belonging to international organisations.

IV. Conditions of admission for returning Tamils

1. Arrangements for controlling entry by returning Tamils including any changes in the extent, and the basis for duration of detention

The delegation had a meeting with the Department of Immigration and Emigration (hereinafter referred to as "Immigration"), the Criminal Investigation Department and the National Intelligence Bureau, during which the procedures for entry controls at Colombo airport were reviewed. In addition, a number of interlocutors, including the UNHCR, NGOs and foreign representations were asked to give a more detailed account of their experience with Tamils returning from abroad.

Entry controls are carried out by immigration officers. Where there are doubts as to the returnee's identity, contact is established with the Criminal Investigation Department and the National Intelligence Bureau of Immigration, to which the person in question is transferred for more detailed investigation. The Criminal Investigation Department and the National Intelligence Bureau are located in separate offices in the airport itself. Immigration emphasised that it was immigration officers who decide when identity can be regarded as established and when a case can be referred to the Criminal Investigation Department and the National Intelligence Bureau.

The National Intelligence Bureau stated that it was involved in investigating persons seeking entry, including investigations whether the person in question appeared on the list of wanted persons.

Description of entry controls in cases where persons seeking entry are in possession of travel documents

As regards the entry document requirements Immigration stated that there were no identification problems with regard to entry controls if the person seeking entry was in possession of a travel document issued by the Sri Lankan authorities, since in such cases identity is regarded as approved.

The UNHCR stated that it had been noted that in the period October/November 1997 – May 1998 the authorities had introduced tighter control procedures for returning rejected asylum-seekers who thereafter were detained for longer periods. In this connection the UNHCR had had a meeting with the immigration authorities and with the Criminal Investigation Department. It was stated at the meeting that the authorities had not made any formal changes to entry controls but that they had in practice introduced tighter control arrangements. The authorities explained that the reason for such tighter measures was the fact that information had been received that returnees had been involved in the LTTE activities in the northern and eastern areas of Sri Lanka. The UNHCR stated that entry control procedures had been amended immediately after the meeting.

The UNHCR stated that in most cases those seeking entry who are in possession of a passport or other identity papers are authorised to leave the airport on the same day as their arrival. According to the UNHCR there are therefore at present no problems for returnees who are in possession of travel documents. The UNHCR bases its view on the information it has received from those countries who send back asylum-seekers. The UNHCR stated that it has good contact with the Criminal Investigation Department and the National Intelligence Bureau and that it receives a weekly report indicating who is detained at the airport. Against this background the UNHCR can contact the relevant authorities if it is found that the same person appears on the list several times in succession. The UNHCR is not aware of any 1998 cases where returnees were exposed to harassment at the airport. The UNHCR stated that the number of people with travel documents detained for a longer period in connection with entry is minimal.

Entry without travel documents

Immigration stated that persons seeking entry and not in possession of travel documents or other identity documents would be detained until their identity can be regarded as established.

The UNHCR stated that in those cases in which the person seeking entry is not in possession of a passport or of travel documents, identity can be established for example if a relative turns up at the airport and vouches for the returnee's identity. The UNHCR further stated that returnees are allowed to 'phone their family and other persons.

Do returnees risk detention upon entry and if so for how long and on what basis?

Immigration could not clarify how long an identity check takes on average. Duration depends on the individual case. It was stated that in some cases it takes only a matter of a few hours while in others it takes longer. Immigration stressed that the length of entry checks also depends on the extent to which a person seeking entry is willing to cooperate with the authorities, which is not always the case.

Immigration stated that entry control arrangements apply to all persons seeking entry, including Muslims, Sinhalese and Tamils, and that further enquiries are carried out only in those cases in which there is definite suspicion that the documents are not in order.

With regard to the question of possible detention upon arrival in Colombo, the Swiss aliens attaché stated that only two persons were detained during the period in which the agreement²¹ on repatriation was in force. Moreover, the persons in question had been detained for at most one week, and subsequently released by Negombo Magistrate Court following the embassy's mediation in these cases. The detentions/releases took place in June 1998. It should be noted that all returnees from Switzerland are in possession of "emergency certificates" or other valid travel documents. Following entry a few returnees were arrested for example at checkpoints or the like. The number of arrests in 1998 was 10. In an individual case in September 1997 one person was arrested and detained for four months, during which he was exposed to ill-treatment. He was subsequently released on bail and three months later the court dropped the case against him.

As regards the question of the possible detention of returning Sri Lankans upon entry, the Netherlands aliens attaché reported that all returnees from the Netherlands had been detained upon arrival in the period October 1997 to June 1998²². In addition, the Netherlands aliens attaché stated that

²¹ Switzerland has had a readmission agreement with the Sri Lankan authorities since 1994. No changes have been made to the agreement, which covers monitoring by the UNHCR. Prior to expulsion the UNHCR receives a list of all those scheduled for deportation, with an indication of names, date of birth and whether they are being escorted by the police. On this basis the UNHCR examines whether the deportee passed through airport controls. The Swiss agreement further includes the requirement that the Sri Lankan authorities should advise the embassy if returnees are arrested. Finally, it follows from the agreement that the persons concerned should not be forced to return to their native area. The embassy was aware of the fact that a letter on this issue was sent to all police stations in Colombo. The embassy attaché stated that Switzerland returned 814 persons in the period June 1994 to July 1998. At the end of 1998 the number was about 900. In 1997 211 persons were sent back, in 1998 about 150.

²² In September 1997 the Netherlands concluded an agreement with the Sri Lankan authorities on the return of rejected asylum-seekers. The content of the agreement is the same as the Danish/Sri Lankan

the MIRJE and Home for Human Rights had approached her re these returnees; she then contacted the police station in order to attend to their needs. In this connection, the attaché spoke of a person who had been sent back in February 1998 and who was arrested on 25 July 1998 because the authorities had heard that he had given the LTTE economic support during his stay in the Netherlands. He is still in custody. Four weeks earlier the attaché raised the matter with Denmark's Public Prosecutor, who promised to take the case further. The Netherlands attaché further stressed that the advantage of the "emergency certificates" was that in practice returnees were allowed to keep them after entry and that they could be used as identity documentation pending re-issue of a national ID card.

The joint Nordic aliens attaché said with regard to returnees from Norway²³ that most were detained at the airport in order to establish their identity. Reference was made to an instruction whereby the immigration authorities cannot immediately grant entry if the person seeking entry is not in possession of travel documents. It was stated that four or five persons were released immediately after. The attaché said that most of them were detained at the airport for two to three days while some were detained for a week. In one case a returnee was held for 17 days at the airport itself. One of the detained stated that he had been exposed to harassment during entry controls. According to the attaché the statement made by the person in question was not convincing. The attaché was not aware of any problems encountered by returnees during registration in Colombo or of any special problems with the issue of ID cards.

INFORM stated that returnees firstly risk being arrested at the airport. A great number will be asked about the aim of their departure, including the reason for having sought asylum. According to INFORM the authorities can be very hostile in such circumstances. INFORM is also aware of the fact that the police have demanded bribes from returnees as it is well-known that returnees have money.

Mr Ratnavel stated that he was not aware of cases regarding returnees from Denmark. He was, however, aware of such cases of returnees from Germany, England, Switzerland, France, and in particular Senegal and Ukraine. Mr Ratnavel was aware of between 300 to 400 cases of persons sent back from Ukraine or Senegal, while the number of returnees from Europe of which he was aware amounted to fewer than 50.

agreement except that return is possible under the Netherlands agreement only if the person in question helps with the issue of travel documents. The Netherlands has returned 25 Sri Lankans since the agreement was concluded. On 1 April 1998 the Netherlands authorities suspended the re-admission agreement. The reason was that the Netherlands authorities had learnt that all returnees were being arrested and detained by the Criminal Investigation Department upon arrival in Sri Lanka. On 17 June 1998 the UNHCR held a meeting on this matter with the police in Colombo. Reference should be made to the passage on page X referring to the meeting with the UNHCR. On 9 October 1998 the court in the Netherlands passed judgment on the question of the expulsion of Sri Lankans. The judgment, which is without appeal, stipulated that expulsion to Sri Lanka was not irresponsible given the current security situation in the country. The embassy specified that no rejected asylum-seekers had been sent back since the judgment had been passed for several practical reasons including the fact that Air Lanka no longer had a direct air route from the Netherlands to Sri Lanka, that many of the travel documents issued are no longer valid and that some of the rejected asylum-seekers have in the meantime applied for re-consideration of their asylum cases.

²³ Norway expelled some 30 Sri Lankan nationals to Sri Lanka in 1998. None of those expelled in the last six weeks was in possession of travel documents although some held ID cards or various kinds of certificates including birth certificates. It should be noted that Norway has no formal agreement with the Sri Lankan authorities on the re-admission of rejected asylum-seekers.

Mr Ratnavel stated that returnees were arrested, detained, held in custody and subjected to payment of fines. He also knew that returnees were treated very poorly at the airport and that some were exposed to actual ill-treatment. He stated that problems arose when returnees were handed over to the Criminal Investigation Department. It was stated that even the hearing at the airport typically lasted one or two days. Mr Ratnavel was aware of cases in which people had been detained for more than 24 hours without having been brought before a judge. He also took the view that judges always followed the recommendations of the Criminal Investigation Department and that they automatically prolonged detention cases initiated by the Criminal Investigation Department.

Mr Ratnavel added that bribery was a much used-practice during entry controls at Colombo airport.

The Institute for Human Rights stated that returnees risked being detained at the airport by the authorities.

Mr Ponnambalam (lawyer) stated that all returning Tamils were detained upon arrival in Sri Lanka and that typically they were kept in custody for two weeks. Moreover, many of the returnees were forced to hand over money for their release. He was unaware of the reason for this or which regulations were being applied. He therefore felt that being sent back from abroad was in itself suspicious.

2. Possible registration of Tamils returning to Sri Lanka

Immigration generally stated that returning rejected asylum-seekers were not given different treatment from any other arrivals and that there was no registration of arriving Sri Lankans.

An international source wishing to remain anonymous did not think that returning asylum-seekers were being registered.

3. Residence permit requirement for returning Tamils who wish to remain in Colombo

The Chief of Police stated that returnees can be registered in Colombo on the basis of a passport or other travel documents. He saw no problem in the fact that someone had been abroad but stated that the person was supposed to return to his home area, albeit on a voluntary basis.

None of the interviewees had any actual knowledge of cases/circumstances in which returned asylum-seekers who had originally come from the northern and eastern parts of the country had been forced to return to those areas.

The UNHCR stated that from a legal point of view there were no restrictions on staying in Colombo for anyone coming from abroad. The UNHCR was not aware of anyone having been forced to leave Colombo. As regards payment of bribes to stay in Colombo, the UNHCR said it had heard of this although it had no clear knowledge of such cases. Moreover, the UNHCR had not received any information on returnees being forced to leave Colombo. The UNHCR commented, however, that those concerned would in such cases probably contact the various NGOs instead of the UNHCR.

An international source wishing to remain anonymous commented that, officially, persons from the northern area were not forced to leave Colombo, but that in practice the police told them to leave the city within a week. In such cases the problem could be resolved by paying bribes.

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The Netherlands aliens attaché stated that returnees who originally came from the northern areas were not any worse off in Colombo than other internally displaced persons from those areas. One exception to this might be those situations in which the person was without an ID card.

INFORM further stated that people often "chose" themselves to leave Colombo in view of the problems connected with registration. INFORM stressed that problems might arise in finding a place to stay if not in possession of an ID card or without any connection or family in Colombo.

Mr Ratnavel said he did not know of any cases in which persons had been forced to leave Colombo and stressed that the reason was that the authorities could not send those concerned back to the northern and eastern areas, as there was no civilian traffic to these areas.

The MIRJE commented that Tamils felt insecure during their stay in Colombo which is why they "chose" themselves to leave Colombo.

The Law and Society Trust stated that returning Tamils were particularly vulnerable and that there were instances of detention upon arrival in Sri Lanka. The source further stressed that the fact that there were no actual rules for monitoring returnees was a huge problem.

The Institute for Human Rights complained that there was no real system for receiving returnees. The same source stated that in cases of long absence returnees might have problems in obtaining ID cards, registration and accommodation. Problems might be aggravated where the person in question had no network.

The Danish re-admission agreement

On 18 August 1998 the Danish authorities signed an agreement with the Sri Lankan authorities on the re-admission of Sri Lankans who have not or no longer have the right to reside in Denmark. Under the agreement no more than 350 persons may be expelled in the first year. The agreement must be renewed every other year. It follows from the agreement that the Sri Lankan authorities will issue travel documents to all rejected Sri Lankans provided that there is proof that they are Sri Lankan nationals. The travel document can also be issued in those cases in which the person does not wish to cooperate. After the entry into force of the agreement no person was expelled without being in possession of a travel document issued by the Sri Lankan authorities.

Under the agreement expelled Sri Lankans are able to return to Sri Lanka in safety and with dignity.

The Danish Police Force stated that seven Sri Lankan nationals were expelled without escort to Sri Lanka in the period from 1 January 1998 to 28 October 1998. In the same period 28 persons were expelled under escort while 91 were estimated to have left by the end of September 1998. As regards expulsions without escort no information had been received on whether there had been any detentions. As regards expulsions under escort the Danish Police Force had information that six persons had been detained for a period ranging from one hour to six days while the other persons expelled under escort had not been detained.

The delegation further received information from the Danish Police that two persons had been expelled under escort after the agreement entered into force and up to the point when the delegation left for Sri Lanka and that one person was taken to Sri Lanka under escort. The Danish expulsion authorities did not receive any information on whether the two first-mentioned persons were detained upon entry. The person who was expelled under escort had not been detained.

During their stay in Sri Lanka the delegation was informed that a Sri Lankan national who had been sent back from Denmark had been detained at Welikada prison in Colombo. The person was sent back from Denmark on 5 November 1998 and was arrested by the police in Colombo on 25 November. On 30 November 1998 the individual was brought before Colombo Magistrate's Court No 3, which released him. As regards the reason for his detention the Consulate-General stated that in the week of 25 November 1998 (in connection with Great Heroes Day), when the person was detained, tighter security measures had been introduced in Colombo and that he might well have been detained on that occasion.

The Consulate-General stated that they had only been contacted by a single expelled Sri Lankan in a case in 1998. The person, who is the same as the one referred to above, had asked for information on the possibility of travelling to Jaffna. The Consulate referred him to the ICRC and the joint Nordic aliens attaché.

Immigration stated that since 1996 there had been no knowledge of any problems with Sri Lankan nationals who had been sent back to Sri Lanka from Denmark.

V. Departure situation

1. Possibility of departing from places other than Colombo

Immigration stated that Colombo airport continues to be the only place from which civilians can legally leave Sri Lanka.

According to the Ministry of Defence it is not possible to stop people from leaving Sri Lanka by boat via India. In this connection it referred to the short distance between India and Sri Lanka and to the fact that there were many trawlers in the waters between these two countries which those leaving could board.

The Netherlands Embassy stated that many Sri Lankans continued to leave Sri Lanka by boat for India.

The Swiss Embassy felt that generally speaking it was impossible to leave from places other than Colombo airport and referred to the risk of being discovered, including the great dangers involved in travelling via India.

2. Changes in control arrangements at Colombo airport compared with the situation in 1997

Immigration gave a detailed account of the authorities' exit controls at Colombo airport. No changes have been made to the control arrangements for those leaving the country.

Those leaving the country must present their passport in person; a guide may not present the passports of a group of travellers collectively.

In general it is enough to present a passport or possibly a visa, while further checks on travellers are only carried out in cases where such documents arouse suspicion. Immigration stated that it is not possible to check all departing travellers on the basis of the lists of wanted persons at the disposal of

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the airport authorities. Immigration added that wanted persons usually chose to leave the country on a passport that was genuine but that had been issued under false conditions. Immigration could not go into details regarding exit possibilities in the case of wanted persons or whether this was very easy or very difficult.

Immigration could not give any details about the number of cases in which it had been established that exit had been achieved on the basis of bogus travel documents. Immigration noted in this connection that the agents who masterminded illegal emigration were very well-organised and that it was extremely difficult to uncover the various links of such activities. Immigration explained that this was a very profitable business which also involved lawyers.

Immigration referred to a 1996 case involving the arrest of staff working for immigration, the Criminal Investigation Department and Air Lanka on wide-ranging corruption charges relating to 19 illegal emigrants. The immigration officials were all released without being charged while the case against the other detainees was still pending.

According to Immigration, Air Lanka has started to make a copy of all passports upon exit to avoid having to pay fines as in this way the air companies can prove that the person was in possession of a valid travel document on exit. It was stated that this was particularly effective in cases where the person who had left the country had destroyed his travel documents, as a copy was still available.

The National Intelligence Bureau claimed that immigration officials did not have sufficient resources to ensure that exit could not take place on bogus visas. It furthermore stated that in view of the lack of electronic equipment in the airport passengers could also leave on passports that were genuine although they had been issued on the basis of false documents.

The Netherlands Embassy stated that the authorities did not have sufficient technical equipment, making it therefore impossible to stop wanted persons from leaving. There was corruption related to exit from Sri Lanka although the Embassy thought that this occurred less than before and said that several embassies were cooperating in checks on passengers leaving the country.

The Swiss Embassy stated that exit controls were not particularly effective and that it could easily conceive of the possibility of leaving Sri Lanka illegally. In such cases the persons concerned generally left with the help of a facilitator who organised everything in connection with exit. The source further stated that facilitators had an extensive network in the airport itself.

Several of the interviewees said that many asylum-seekers were leaving Sri Lanka legally for a destination exempt from a visa requirement to travel on from there on false travel documents. They stressed that Dubai, Moscow and Nairobi in particular were used as such intermediate stations.

Two international sources wishing to remain anonymous stated that there was extensive corruption among airport staff, including immigration officials, airline companies and the Criminal Investigation Department.

Punishment for illegal exit

The provisions governing punishment for illegal entry into or exit from Sri Lanka are contained in Chapters 351, sections 45 et seq. of the 1956 Immigrants and Emigrants Act. Amendments to this Act were adopted inter alia by means of "Amendment Act, No 16 of 1993" which covers the unlawful transfer of travel documents for use by other persons and the unlawful possession of several

valid travel documents. Most recently, "Amendment Act, No 42 of 1998",²⁴ introduced changes to the punishment for infringements of rules governing illegal entry and exit. The provision now stipulated that persons who infringe the rules governing illegal entry and exit may be punished with a fine of up to 200 000 rupees (about 20 000 Danish kroner). By way of comparison a fine under the 1953 law could at most amount to 5000 rupees (about 500 Danish kroner).

Immigration stated that with regard to entry an inquiry was carried out to establish to what extent the person had left the country illegally. Immigration referred to the tighter rules on illegal exit, including those relating to the activities of facilitators.

VI. PASSPORT-ISSUING PROCEDURE

1. *Changes in the procedure compared with the situation in 1997*

The delegation had a meeting with the Sri Lankan passport-issuing authority, i.e. Immigration, which comes under the Ministry of Defence.

Submission of applications and issuing of passports

It was stated that no changes had been made to the procedure for submitting applications and for issuing passports. Applications for the issue of a passport can thus be made in Colombo or to one of the regional departments spread all over the country. Offices receive applications for a passport that are referred to the main office in Colombo with a view to issue. Immigration stated that there were at present 300 regional departments in operation, several of which were located in the northern and eastern parts of the country. The authorities can furthermore make mobile arrangements to allow applications for a passport to be submitted by persons living on the outskirts of districts and who because of the war may have difficulties in getting to the regional departments.

Immigration stated that they had been in Vavuniya last weekend (week 48) where they had received 700 to 800 applications for a passport. Immigration had issued between 125 and 130 passports under the emergency procedure. The issuing of passports in these cases had lasted a week.

Persons who need to have a passport issued still have to apply in person. It was stated that exemptions could be made from this rule and that this had actually been the case with the elderly sick persons or other less mobile persons.

Sri Lankan nationals living abroad may submit applications to their embassies.

Requisite documents

There are no changes to the type of documents needed to submit an application for a passport. Thus the following documents still need to be submitted: national identity card, birth certificate and certified photos (by a justice of the peace). Immigration stated that it is possible to have a passport issued even if one is not in possession of an ID card but that the person in question is always asked to apply for the issue of a new ID card. Immigration had cooperated with the office issuing national ID cards and could therefore contact this office in order to speed up the issue of ID cards.

²⁴ See Annex 13.

Immigration stressed that not all travellers are in possession of a national ID card. Reference was made to the fact that persons who had lived abroad for a long time were not always in possession of such a card, as was also the case with some older people whose birth had never been registered. Immigration further explained that as children under the age of 16 were not issued with a national ID card there was no need for them to show it for the purpose of being issued a passport.

Where no ID card is available it may under certain circumstances suffice to submit birth certificates or other certificates issued for example by a justice of the peace.

Issue of passports

About 1 000 passports are issued daily in Colombo itself. In addition the office receives 4 to 500 passport applications daily from the regional departments. Passports are issued at the central office in Colombo.

M-series passports were introduced in September 1996 and since then approximately 700 000 such passports have been issued. L-series passports which have not yet expired are still accepted as valid travel documents. The advantage of the M-series is that the photograph has been scanned into the passports making it very hard to forge. Immigration had nevertheless come across a number of false M-series passports and added that nothing was impossible.

As regards the possibility for a wanted person to have a passport issued Immigration stated that it received reports from the police and from the courts regarding wanted persons but that it was not possible to go through all these lists every time a passport was being issued.

The Netherlands Embassy stated that it was impossible to prevent a passport from being issued to a wanted person if it was to be issued in just one day.

Immigration stated that individuals must as a rule collect passports themselves but that under certain circumstances this may be done by another person. Immigration explained that the preferred method was for the person to come and collect the passport himself as this ensured that it was issued to the right person and that any mistakes in the passport could immediately be corrected. Passports issued to persons living abroad were sent via diplomatic mail to the applicant.

Immigration stated that the price for issuing a passport valid for all countries was 1 750 rupees. A passport valid for the Middle East costs 300 rupees.

As a rule it takes one month to have a passport issued although it is possible to have a passport issued in a day against payment. Passports issued on the same day cost 3 000 rupees if valid for all countries and 1 500 if valid only for the Middle East.

Issue of passports in cases of loss of the original passport

Immigration said that in earlier days the rule was that persons who had lost their passport could have a new one issued within a period of six months. It was not considered practical to apply this method strictly and an alternative was chosen by issuing a passport valid for one trip only. In such cases an extra payment of 1 000 rupees was charged. In addition, a document proving the loss of the passport such as a police statement must be submitted. The reason for this is to prevent a person from obtaining several passports which can be used for the purpose of illegal emigration.

VII. Annexes

(Only Annexes 1 and 2 are available electronically)

- Annex 1 Meetings
 - Annex 2 Abbreviations
 - Annex 3 Map of Sri Lanka
 - Annex 4 ER/1/98 of 27 January 1998 (banning of the LTTE)
 - Annex 5 ER/1/98 of 5 June 1998 (restrictions on freedom of expression)
 - Annex 6 Presidential directives re-introduced on 31 July 1997
 - Annex 7 Account by the Public Prosecutor of 25 November 1998 (legal cases on the prosecution of members of the security forces)
 - Annex 8 Act, No 21 of 1996 (Legislation on the HRC)
 - Annex 9 List of HRC Commissioners' names and addresses
 - Annex 10 List of local offices responsible to the HRC
 - Annex 11 Complaints received by the AHC in the period 12 July to 15 November 1998
 - Annex 12 Guidelines for authorising residence in other parts of Sri Lanka
 - Annex 13 Immigrants and Emigrants (Amendment) Act, No 42 of 1998 (increased fines for illegal exit)
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ANNEX 1

Meetings

1. Meeting at the Department of Immigration and Emigration

Sri Lankan side:

Mr W.D.L. Perera, Controller of the Department of Immigration and Emigration

Mr Daya Rahasinghe, Asst. Controller

2. Meeting at the Ministry of Foreign Affairs

Sri Lankan side:

Mr B.A.B. Goonetilleke

Mr Wijesiri Hettiarachchi

3. Meeting at the Office of the Director of Public Prosecutions

Sri Lankan side:

Mr Sarath N. Silva, Public Prosecutor

Mr Vijith Malalgoda, Senior State Counsel

4. Meeting with the police

Sri Lankan side:

Mr B.L.V. de S. Kodituwakku, Commissioner of Police

Mr K.D.H. Punya de Silva

5. Meeting with DIG (Directorate of Internal Intelligence)

Sri Lankan side:

Mr T.V. Sumanasekera, Addl. Director General

Mr Neville Wijesinghe, Deputy Director

6. Meeting with Human Rights Commission

Sri Lankan participant:

Mr T. Suntheralingam (Commissioner)

7. Ministry of Defence

Sri Lankan participant:

Add. Secretary NN

8. Meeting with the Front Office
Sri Lankan participant:
Mr Somaratne Kariyawasam

9. Meeting with UNHCR – Colombo
UNHCR participant:
Senior Protection Officer Bo Schack

10. Meeting with ICRC
Participant from the organisation:
Head of Delegation Max Hadorn

11. Meeting with a UN organisation (wishing to remain anonymous)
Participant from the organisation
Mr A.N. Other

12. Meeting at the Swiss Embassy
Participant from the Embassy:
Mr J. Caspar Landolt, Aliens Attaché

13. Meeting at the Netherlands Embassy
Participant from the Embassy:
Ms Jola Vollebregt, Aliens Attaché

14. Meeting at the Norwegian Embassy
Participant from the Embassy:
Mr Geir Aage Neerbye, Joint Nordic Aliens Attaché

15. Meeting with Consulate-General of Denmark, Sweden and Finland
Participant from the Consulate:
Mr P.B. Rasmussen, Consul-General

16. Meeting with INFORM

Collects information and publishes a monthly newsletter. Does not take on legal cases but refers them to other organisations.

Participants from the Organisation:

Ms Sunila Abeyesekera

Mr Dhananjaya Tilakaratne

17. Meeting with the Movement for Inter-Racial Justice and Equality (MIRJE)

The organisation provides free legal aid and handles legal cases under the PTA/ER and habeas corpus and human rights complaints.

Participants from the Organisation:

Mr N. Kandasamy, Coordinator/Human Rights Desk

Lucien Rajakarannayake, Deputy Director and journalist

18. Meeting with the Centre for the Study of Human Rights

Part of Colombo University. Cooperates with the authorities and NGOs in the area of research. Not involved in lobbying or monitoring.

Participants from the Organisation:

Prof. Fernando, Head

Mr M.D.R.A.M. Senanayake, Chief Administrator Officer

19. Meeting with the Institute of Human Rights

Provides free legal aid with regard to legal suits. Also provides social activities for families if the main provider is in prison or for persons who have been released after a long period of detention

Participants from the Organisation:

Mr Jeevan Thiagarajah, University of London

Mr Tahirih Q AynJeevan Thiagaraj, Rehabilitation Officer

Human rights lawyers:

Kvishai Gunawardena

B.N. Thamboo

Sarojini Somasokaram

20. Meeting with the Law and Society Trust

Concentrates on research and partly on lobbying. Refers cases to other organisations for possible legal counselling.

Participant from the Organisation:

Mr Neelan Tiruchelvam, Director and lawyer (also Member of Parliament for the Tamil opposition party (TULF))

21. Meeting with the Family Rehabilitation Centre

Helps vulnerable groups such as widows, children and women who have been the victims of rape. Provides medical and psychological help. Refers people to other organisations for legal aid.

Participants from the Organisation:

Mr W. Diyasena, Executive Director

Mr C.T. Jansz, Administrator

22. Meeting with the Association for the Protection of Tamils

Set up in November 1995 by a group of Tamils from Colombo. Helps Tamils to survive in Colombo but provides no legal aid. Composed of "ordinary Tamil middle-class people".

Participant from the Organisation:

Mr V. Kailasapillai, businessman

23. Meeting with the Civil Rights Movement of Sri Lanka

Collects and provides documentation on human rights conditions.

Participant from the Organisation:

Ms Suriya Wickremasinghe, lawyer

24. Meeting with Home for Human Rights

Started in Jaffna in 1986 although its headquarters are now in Colombo. Provides free legal aid and handles legal cases under PTA/ER and handles habeas corpus and human rights suits.

Participant from the Organisation:

V.S. Ganesalingam; Director Legal Programme, lawyer

25. Meeting with the All Ceylon Tamil Congress

G.G. Ponnambalam, lawyer

A. Vinayagamoorthy, lawyer

26. Meeting with Lawyers for Human Rights

Participant from the Organisation:

Mr Thiranagama, General Secretary

27. Meeting with the Forum for Human Dignity

Participants from the Organisation:

Mr K.S. Ratnavel, Attorney at Law

Ms Maheswary Velaktham

28. Meeting with the Action Group for Tamils

Monitors human rights conditions of Tamils. Lawyers can either handle cases themselves or refer them to other NGOs.

Participants from the Organisation:

N. Vijayasingam, President, K. Arunasalam, Vice-President, V. Thirunarukarasu, S. Saravanamuttu, Treasurer, V.S. Thurairajah and S. Satkunam

29. Meeting with a Member of Parliament of the UNP opposition party

Dr Jayawardana

ANNEX 2

List of abbreviations used

EPDP	:	Eelam People's Democratic Party
EPRLF	:	Eelam People's Revolutionary Liberation Front
ER	:	Emergency Regulations
HRC	:	Human Rights Commission
HRTF	:	Human Rights Task Force
ICRC	:	International Committee of the Red Cross
LTTE	:	Liberation Tigers of Tamil Eelam
MIRJE	:	Movement for Inter-Racial Justice and Equality
NGO	:	Non-governmental Organisation
PLOTE	:	People's Liberation Organisation of Tamil Eelam
PTA	:	Prevention of Terrorism Act
TELO	:	Tamil Eelam Liberation Organisation
TULF	:	Tamil United Liberation Front
SLMC	:	Sri Lanka Muslim Congress
UNHCR	:	United Nations High Commissioner for Refugees
UNP	:	United National Party