

The views and opinions stated in this report do not necessarily reflect the views of the organizers of the workshop. This paper is not, and does not purport to be, fully exhaustive with regard to conditions in the country surveyed, or conclusive as to the merits of any particular claim to refugee status or asylum.

Sri Lanka

Country Report

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SRI LANKA

Country Report

**Presentation by Martin Stürzinger,
additional remarks by Thomas Wenk
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I. Background

I.1. Facts and figures

Sri Lanka is situated on the southern tip of India, only separated from it by a narrow strait. India and Sri Lanka therefore have a long common history and have always kept a close relationship. Sri Lanka covers an area of 66,610 sq. km and has a population of 19 million inhabitants. Its population density is thus higher than in Switzerland and most other European countries. The highest rates can be found in Colombo, the south and Batticaloa. No census has been carried out for the last 20 years, but a new one is scheduled for 17 July 2001. The many internally displaced people (IDPs) are of the opinion that their voting rights in the north might be restricted after the new census. Jaffna had a population of 800,000 people before the outbreak of the conflict, but now it is assumed that Jaffna District (Peninsula) is only inhabited by 400,000 people. Given that the number of inhabitants in an electoral district forms the basis for the allocation of parliamentary seats, Jaffna might lose some MPs if only the decreased number of inhabitants is registered as voters.

According to the last census in 1981 74% of the Sri Lankan population were Sinhalese. A lot of myths exist about the arrival of the Sinhalese in the country. They are said to have come from Bengal approximately 2,500 years ago. It is important to differentiate between the Low-country Sinhalese in the south (around Colombo) and west and the Up-country Sinhalese, who live around Kandy. While the former were subjected to the colonisation process, the latter kept their independence as a kingdom up to 1815 when the British conquered the Up-country. It was only in 1833 that Sri Lanka came under a unified administration for the first time.

The 18% Tamil population equally falls into two categories. 12,6% belong to the Sri Lanka or Ceylon Tamils, living in the north and east of the country. Their ancestors came to the country from Tamil Nadu in south-east India mainly as fishermen. This migration also started about 2,500 years ago. The remaining 5,6% Indian Tamils immigrated after 1860, predominantly in order to work on the plantations in the Kandy hills in the central region. Nowadays the Tamils in South India speak a different dialect, so that in order to find out a person's nationality one can distinguish Tamils from India and those from Sri Lanka by language testing.

T.W.:

The Up-country Tamils are low-class Hindus, having hardly any connection with the Sri Lanka Tamils in Jaffna and in the east. After independence the Indian Tamils were to a large extent deprived of their rights whereas the Sri Lanka Tamils, especially the high-class Tamils in the north, had co-operated with the British during colonial times and played a significant part in the Sri Lankan administration.

M.S.:

Another ethnic group are the Burghers, who - as descendants from the European colonisers - are white people, usually speaking English. Sri Lanka was under the rule of three colonial powers in the course of history: the Portuguese, the Dutch and the British. Each of them ruled the country for about 150 years. Other ethnic minorities are the Muslim Malay and the Veddha, a small group of original inhabitants of the island.

The Sinhalese are either Buddhists or Christians while among the Tamils one finds Hindus and Christians. 7,1% of the population are Muslims who live mainly in Colombo and the east of the country and are descendants from traders from the Middle East. They speak Tamil and, in contrast to the LTTE, who sometimes regard them merely as Tamils with a different religion, they consider themselves a distinct ethnic group.

As regards languages, Sinhala is spoken by 75% and Tamil by 25% of the population. In addition, English is not only spoken by the Burghers, but also widely used in the administration.

Recently, one can observe a trend towards an ethnic division of the communities. Villages which have so far been populated by different ethnic groups have become villages with only one ethnic community. Colombo remains the exception, with an estimated 500,000 Tamils living there, a number which has yet to be confirmed by the census.

After the Indo-Sri Lanka Peace Accord 1987 there are now eight provinces (the formerly Northern and Eastern province were integrated into the newly formed North Eastern Province) and 24 districts, headed by the so-called Government Agents who are designated by the President. On the third level there are 274 divisions with the Assistant Government Agents as administrative heads. Further administrative bodies are the municipal councils, the urban councils in small towns and the so-called Pradeshiya Sabhas (village councils) in villages. In all communities the Grama Sevaka (GS) is the head of the village.

The North of Sri Lanka is almost exclusively inhabited by Tamils, who have always advocated being joined with the Eastern Province as this would ensure them an absolute majority. Unlike in the north, the population in the east is one third Tamil, one third Muslim and one third Sinhalese. In 1995, Jaffna was taken over by the army after having been under LTTE control for a very long time. The LTTE still hold Kilinochchi, Mullaittivu, parts of Mannar and Vavuniya. The Eastern Province with Trincomalee, Batticaloa and Ampara is controlled partly by the LTTE, partly by the government. The independent state Tamil Eelam, which the LTTE fight for, more or less covers today's North-Eastern Province.

Economy-wise, the main export produces next to tea from the Up-country are textiles, rubber and coconut. Tourism has suffered considerably from continued fighting, even though there are now again 400,000 tourists in the country per year. After reaching the lowest point in 1989 with only 180,000 tourists the number has now risen again to the level of 1982. The main revenue, however, stems from contributions of Sri Lankans

working outside the country, mainly in the Middle East, but also in Europe, Canada, the USA and Australia.

T.W.:

About one tenth of the whole population of Sri Lanka and one third of the Tamil population of Jaffna Peninsula are living abroad, resulting in a large sum of remittances being sent to the country. The Sri Lankans working for instance as housemaids in the Middle East and Malaysia are predominantly Sinhalese or Muslim while the Sri Lanka Tamils tend to go to Western countries.

I.2. Historical and political background

M.S.:

Even before Sri Lanka became independent from the UK there had been a lot of discussion as to which state structure should be adopted in order to guarantee the rights of the minorities. When Sri Lanka gained independence on 4 February 1948, the United National Party (UNP), which was in power at that time, immediately deprived the Indian Tamils living in the Kandy area in the Up-Country of their citizenship and voting rights. Some of these people had to return to India, a country they did not know as it had been their grandfathers or great-grandfathers who had come from there to Sri Lanka. The ones staying in the country have in the meantime been given ID cards and been accepted as Sri Lankan citizens again.

In 1956 a new party, the Sri Lanka Freedom Party (SLFP) under Solomon Bandaranaike, came to power. The major issue of his campaign was "Sinhala Only": he promised to make Sinhala the only official language within 48 hours after his election. The vote was directed against the former British government, but of course had considerable effects on the Tamil population. Despite heavy protests by Tamil leaders this demand was formally implemented, yet in practice it was impossible to make the Tamils in the north speak Sinhala with the police, other official authorities or in court. Therefore Solomon Bandaranaike embarked upon talks with the leader of the Tamils, leading to an agreement on this issue. In 1959, Solomon Bandaranaike was assassinated by a Buddhist monk because he was willing to make concessions to the Tamils.

By then the UNP had changed part of its agenda and also advocated "Sinhala Only" to be enforced. As a result, less Tamils had the opportunity to be employed in the government sector. Before 1948, public administration had constituted an important employer for them. (T.W.: During colonisation times the British had - like everywhere else - followed a policy of "divide and rule", so that the administration was largely run by Tamils at the time of the independence declaration.) 18% of the Tamil population were employed in the government sector. (T.W.: With 75% of the population being Sinhalese, the Sinhala Only Act can be seen as a reaction to this background.) The proportion of Tamils in the state sector diminished after 1956, also because they refused to take the then obligatory tests in Sinhala. Even opposition to learning the language at school, which had been widely accepted before 1956, grew immensely among the Tamils in this context.

At the beginning of the 1940s irrigation projects along the Mahaweli River, the largest river in Sri Lanka, were launched and sponsored by the state. In this context a lot of Sinhalese from the south settled in the eastern district. On the Tamil side these resettlements were perceived as being designed to change the ethnic composition of the population in the east.

A reform of the university admission regulations in 1970 aimed at standardisation, meaning that a certain amount of people from certain provinces are granted access to university. It became difficult for an applicant to enter university if the district s/he came from already had a large share of students. These changes considerably affected the Tamils in the north, who traditionally had a large proportion of their youth studying at the universities. (T.W.: In former times the Tamils had much more students at the universities than their proportion of the population would entitle them to have. To give one example, in 1977 40 odd percent of the students were Tamils from Jaffna while only about 10% of the population belonged to the Ceylon-Tamil minority.) The effects of the admission reform were evident since the test results required for being admitted especially to law and medicine courses would differ: a Sinhalese would get admission with a much lower amount of points than a Tamil. This system therefore caused major grievance among the educated youth in the north.

In 1972 the Tamil New Tigers (TNT) were founded as the first Tamil guerrilla group. In May 1976 they changed their name into Liberation Tigers of Tamil Eelam (LTTE). Their leader was and still is Velupillai Prabhakaran. Their demand for a separate state called Tamil Eelam was also taken up by the Tamil United Liberation Front (TULF), the most important political party in the Tamil region. In the 1977 elections the party won 18 seats, more seats than the former government party SLFP, which had only won 8 seats. The TULF therefore became the main opposition party in Parliament. In 1977 for the first time the government and opposition parties were not two Sinhalese parties, but a ruling Sinhalese party (UNP) faced a Tamil party (TULF) in opposition. This constellation of course deepened the ethnic conflict.

All the factors described above resulted in sporadic violent riots in 1956, 1958, 1971, 1977 and 1981.

The UNP's regaining power in 1977 led not only to a new President, Junius Richard Jayewardene, but also to a new constitution installing a presidential system in 1978. More and more violence occurred in the north, so that in 1979 the Prevention of Terrorism Act (PTA) was first of all introduced as an emergency law. In 1982 the PTA became a permanent law and the Emergency Regulations (ER) remained in effect in the whole country. On 25 January 1994 the UN Commission on Human Rights stated the following about the PTA and the ER:

The Prevention of Terrorism Act (which became permanent law by Act No. 10 of 1982) and the Emergency Regulations, both of which give security forces wide powers (e.g. preventive and incommunicado detention) remain in effect in the whole of the country [in 1993] and have been (and continue occasionally to be) the source of many abuses, such as extrajudicial killings, disappearances, abuse of detainees and arbitrary arrest and detention.

No elections were held in 1982, but a referendum took place on 22 December 1982 which extended the mandate of Parliament for another six years. The reason was obvious: the UNP in 1977 had won 140 out of 168 seats in parliament, a five-sixth majority which they could thus keep for another six years.

The TULF did not accept the result of the referendum and its MPs resigned in early 1983, thus depriving the legislature and the governing party of a democratic Tamil opposition with which they could negotiate. Another reason for the reaction of the TULF was the 1983 Sixth Amendment to the Constitution, together with the infamous Regulation 15 A, which required incoming MPs to swear an oath disavowing separatism. The Tamil opposition was left in the hands of militant groups, which further exacerbated the conflict.

The killing of 13 soldiers by the LTTE on 21 July 1983 triggered the so-called Black July during which the Sinhalese attacked Tamils in the south, resulting in the death of 2,000 Tamils. Cars were stopped in the streets, the Tamils within were forced to get out, petrol was poured over them and they were set ablaze. Many Tamils initially fled to the north of Sri Lanka or to South India, but soon afterwards also to European countries, Australia or Canada. The 1983 clashes constituted the beginning of a violent ethnic conflict which widened until 1987. The psyche of the Tamil population took great harm from these incidents, many of them being attacked by their neighbours with whom they had been friends for years. In the aftermath, many young Tamils joined one of the numerous liberation movements. They all fought for an independent Tamil Eelam, but were divided by differences and quarrels. Some of these movements have in the meantime joined the political mainstream by becoming legal parties, whereas others were either dissolved or went on fighting with the LTTE or on their own.

On 29 July 1987 the governments of India and Sri Lanka signed the so-called Indo-Sri Lanka Peace Accord which declared Tamil and English as additional official languages next to Sinhalese and accorded some other concessions to the Tamils. It contained provisions for the devolution of administrative powers to the northern and eastern provinces. The Accord called for the temporary union of the two provinces for one year, after which the inhabitants of the eastern province might (at the discretion of the President) decide in a referendum whether they should form a separate administrative unit. However, this vote has never been carried out, so that formally the two provinces still remain one. Not only did the government consider the situation too difficult for holding the referendum, but the LTTE also rejected it vehemently.

Following the Accord, the Indian Peacekeeping Force (IPKF) was installed to disarm the Tamil militants and to maintain law and order in the north and north-east, but it failed to subdue the LTTE. During the years 1987-1989 the IPKF evoked nationalist sentiments in the south that led to strong support of the Marxist organisation Janatha Vimukthi Peramuna (JVP). The level of political violence rose significantly. There were a high number of disappearances and killings in the south caused by either the JVP or the army, the police or special task forces, with nobody daring to speak out about these cases. In some villages almost the whole male population was wiped out. In November 1989 the JVP leadership was arrested and executed.

Earlier in the same year Ranasinghe Premadasa of the UNP had been elected President. He entered into negotiations with the LTTE who continued fighting the IPKF. In fact President Premadasa provided the LTTE with arms for fighting the IPKF as he wanted the Indian troops to leave Sri Lanka, even though they had been invited to the country by the former government of the same party. In April 1989 the LTTE and the Sri Lankan government reached a peace agreement and established a cease-fire.

After the retreat of the Indian army in March 1990 the LTTE broke the 14 months cease-fire in June 1990 and took control of the north after heavy fighting in the summer of 1990. An all-party conference intended to solve the ethnic conflict failed in September 1990. In October the approximately 75,000 Muslims living in the northern province were expelled from there, the LTTE ordering them to leave their homes within 48 hours. The Muslims of Jaffna town were given only a two hour ultimatum to leave on 30 October 1990. The helpless Muslim minority, who lived in more than 100 settlements in all five districts of the northern province, left their homes and became displaced when moving into other areas within Sri Lanka. The LTTE also expropriated Muslim homes, lands, and businesses, and threatened Muslim families with death if they attempted to return to areas under LTTE control. These expelled Muslims still live as IDPs in the Puttalam area north of Colombo.

In August 1991 the Jaffna Peninsula was cut off from the rest of the country after Operation Balavegaya, during which Sri Lankan troops entered the besieged Elephant Pass, the only geographical entry point from the south.

On 1 May 1992 President Premadasa was assassinated by the LTTE. Dingiri Banda Wijetunge became the new President.

In August 1994 the People's Alliance (PA) under Chandrika Kumaratunga Bandaranaike won the parliamentary elections with the promise to enter into negotiations with the LTTE in order to achieve a peaceful solution to the ethnic conflict. The PA is a coalition of several parties under the leadership of the Sri Lanka Freedom Party (SLFP). Chandrika Kumaratunga Bandaranaike became the new Prime Minister while Dingiri Banda Wijetunge remained President for several months. The 1994 elections signified an important turning point in the ethnic conflict since for the first time the winning party had promised to enter into peaceful negotiations with all other parties of the conflict and even with the LTTE.

In November 1994 Chandrika Kumaratunga Bandaranaike was elected President, with her mother Sirimavo Bandaranaike succeeding her as Prime Minister, which she remained until August 2000. As a side effect, the SLFP is often called Sri Lanka Family Party as it was Chandrika Kumaratunga Bandaranaike's father Solomon Bandaranaike who founded the party and after his assassination in 1959 was succeeded [as party leader] by his wife Sirimavo. Mrs Bandaranaike died on 10 October 2000, immediately after having cast her vote for the parliamentary elections. The name Kumaratunga derives from Chandrika's husband Vijaya Kumaratunga, a leading opposition figure and well-known actor who was in favour of peace negotiations and even contacted the LTTE. He was assassinated on February 16, 1988, most likely by agents of the former UNP government.

Chandrika Kumaratunga Bandaranaike started to hold talks with the LTTE, so that January 1995 saw a cessation of hostilities as well as preliminary negotiations with the LTTE. However, they were not successful and in April 1995 the LTTE resumed violence.¹

¹ See also the book "The Politics of Duplicity" by Anton Balasingham, the spokesman of the LTTE, about the 1994/95 peace talks between the government and the LTTE. It contains the exchange of letters between President Chandrika Kumaratunga Bandaranaike and Velupillai Prabhakaran. It shows that they could not even agree on formal matters.

The army took some time to react to the LTTE provocation, so that it was only in October 1995 that the government started Operation Riviresa and through to April 1996 conducted co-ordinated military attacks on LTTE-held territory on the Jaffna Peninsula. In November 1995 government troops captured Jaffna City. The LTTE told the people to evacuate the town, so that within hours 400,000 people left the Jaffna Peninsula. The majority of them crossed into the Vanni, the northern part of the mainland of Sri Lanka between Vavuniya and Jaffna Peninsula. In April 1996 the army could capture the remainder of the peninsula.

On 13 May 1997 the government forces launched the military offensive Jaya Sikurui ("Certain Victory") in the northern part of Vavuniya in the Vanni region. The operation was aimed at opening a land supply route to the Jaffna Peninsula. Casualties were heavy and the offensive became the longest and bloodiest one during the armed conflict. On 4 December 1998 Operation Jaya Sikurui was concluded without the army having reached the objective of establishing a land route. The offensive displaced as many as 70,000 persons. Today the Jaffna Peninsula is still cut off from the rest of the country, so that it can only be reached by boat or plane.

During the years 1996-1998 the LTTE carried out several attacks in the south, the most important one being the January 1996 explosion of the Central Bank in Colombo. It resulted in the death of more than 100 people and left more than 1,000 wounded. The attack on 25 January 1998 on the Temple of the Tooth in Kandy, the most important Buddhist temple in the country, led to the ban of the LTTE in Sri Lanka.

On 4 August 1998, the nation-wide State of Emergency was reimposed. Since the late 1980s Sri Lanka has most of the time been under State of Emergency conditions.

In November 1999 the LTTE launched the operation Unceasing Waves I and regained almost the entire territory captured by the Sri Lankan army in earlier military offensives. On 2 November 1999 the LTTE attacked Oddusuddan Camp in the Vanni region north of Vavuniya. Moving rapidly south and west thereafter, in a five-day offensive they took several towns previously kept by the army, including Nedunkerni, Mankulam and Puliyankulam. Reportedly, the army suffered casualties by the thousands. Figures provided by the army were much lower. However, it is important to note that if the army gives numbers of casualties at all, they only include those cases where the body of the killed person was found, but not the soldiers "missing in action".

On 18 November 1999 the LTTE fired artillery shells into Vavuniya, the main town with army deployment in the north, killing three civilians.

On 18 December 1999 President Kumaratunga was injured in a suicide attack and lost sight on one eye. Shortly after this incident she was re-elected President on 21 December 1999.

After having taken Vavuniya, the LTTE in December 1999 started Unceasing Waves II, moved further north, and on 16 February 2000 launched an assault on Elephant Pass military base defence lines, four miles north of Paranthan. After one week of heavy fighting more than 12,000 people were displaced. On 22 April 2000 the Tamil guerrilla had a major success when they captured the Elephant Pass army camp.

Only a week later, on 29 April 2000, the LTTE during the offensive Unceasing Waves III took the army camp at Pallai on the route to Jaffna City and some days later they stood 2.5 km outside the city. The LTTE were even in the position to bombard the only airport on the peninsula in Palaly, being of very high significance since all goods or people have to be transported to and from the peninsula by either ship or aircraft. Therefore a huge discussion set in whether the army should be evacuated from Jaffna Peninsula due to the serious threat.

On 6 May 2000 President Kumaratunga declared Sri Lanka to be on war and subsequently put a substantial financial effort into the army, buying a huge amount of new arms, artillery, boats, planes, helicopters etc.

On 3 September 2000 the army started an offensive to recapture the lost territory on the Jaffna Peninsula. More than 250 soldiers were killed and more than 1,000 injured, without any significant change in the relative position of the frontlines. Subsequent offensives on 10, 17, and 26 September 2000 resulted in some gain of territory for the Sri Lankan military and the recapture of Chavakachcheri. This city is now a ghost town, with all houses being destroyed.

On 26 September 2000 the LTTE launched a new operation - Unceasing Waves IV - and was able to push the frontline north of Pallai.

These fighting activities formed the background of the parliamentary elections taking place on 10 October 2000. By winning 107 seats the PA came out of the elections as the strongest party again. As the Parliament has 225 seats, the PA, however, did not achieve a majority and hence needed to work together with other parties. The main coalition partners of the PA are the Eelam People's Democratic Party (EPDP), a former guerrilla group also fighting for an independent Tamil Eelam, and the National Unity Alliance (NUA), formerly known as Sri Lanka Muslim Congress. (T.W.: Formerly - and in my view still - ethnically oriented, they have changed their name in order to become a party more open to other voters, not only Muslims.)

T.W.:

The few ethnically oriented Tamil parties originate from the community of Sri Lanka Tamils, who comprise 12,6 % of the population. Described as the "grand old party", the TULF is the main Tamil party and in my opinion the only democratic ethnically-oriented party without an armed wing. The results show that only 10 % of the Tamil electorate have voted for the TULF. Both the EPDP and the ex-militant Tamil Eelam Liberation Organisation (TELO) now co-operate with the government. While the LTTE, being a banned terrorist group, could not take part in the elections, the EPDP's and TELO's party wings are not proscribed in Sri Lanka. However, the only party which is close to the LTTE and can openly work is the All Ceylon Tamil Congress (ACTC), a party even older than the TULF. Still, the result of votes for them was only 0,31 %. As difficult as it is to judge whether Sri Lanka is facing a civil war situation or a terrorist problem as the Sri Lankan government perceives it, these results and in particular the election outcome of the one party closest to the LTTE have to be kept in mind.

M.S.:

Of course the percentage of votes for the Tamil parties was quite low since the turnout of voters on the Jaffna Peninsula was very low, too - partly below 20 %. In the Vanni it was almost zero. The EPDP gained its four parliamentary seats not because of its final percentage, but because it managed to directly win four seats in the north as the seats are allocated along election boundaries.

T.W.:

As for the situation in Colombo, the ethnically-oriented parties, like the TULF, ACTC etc., have not taken part in the elections there. While the TULF finds great support in the north and the east, it - like all the other Tamil parties - has not tried to contest in Colombo as there is no basis among the electorate for ethnically oriented parties there. In 2000 most of the Tamil voters cast their vote for other parties which are not ethnically-oriented, i.e. the main opposition party UNP or the PA.

I do not agree with the view of several human rights organisations considering the PA and the UNP as Sinhalese parties. To illustrate this point, the second last Mayor of Colombo was a Tamil. If there was so much rancor among the Sinhalese electorate or within the UNP it would not have been possible that a Tamil became Mayor in Colombo. It is useless to nominate somebody from a different ethnic group if s/he is not accepted by the electorate. The Foreign Minister is a Tamil, too, as are the Attorney General and the Second Chief in charge of the police. Of course these persons have not been elected as opposed to the Mayor of Colombo. One can find a considerable community spirit within the population and within the party. I have friends who are members of the UNP and Tamils at the same time. Colombo can be described as a melting pot. Many Tamils there would never support an ethnically-oriented party, let alone the LTTE. Even in the east, like in Trincomalee, most of the people have voted for the UNP and the PA. UNP or PA party members are not ethnically oriented in general. You find Muslims, Tamils Sinhalese among them. While it is true that the majority of their voters are Sinhalese, the boundaries between the ethnic groups are not that clear: whereas no Sinhalese would vote for a Tamil ethnic party, this is not necessarily the case the other way around. A lot of Tamils do vote for UNP and PA.

M.S.:

Another aspect has to be considered when discussing why the Tamil parties did not compete in Colombo, even though half of the Tamils are living in the city. The problem is that on the ID cards the original village where people were born is mentioned and in order to vote they have to go back there. While it is possible for a certain number of Tamils who have been living in Colombo for decades to cast their votes in the city, the majority of Tamils in Colombo are not able to participate in elections there and would have to go back to e.g. Jaffna or Vavuniya for voting. This is an important reason why the Tamil parties did not compete in Colombo.

Since the PA, the EPDP and the NUA together have only a narrow majority in Parliament it is almost impossible for President Chandrika Kumaratunga to carry on her proposals to solve the ethnic conflict. She tried to keep her election pledge to initiate a peace process by proposing a new constitution for the country. The plan was to create a "union of regions" by giving more powers to the provinces and districts. Such a law requires a two-thirds majority in Parliament which could not be achieved so far. The PA needs to work together with the opposition party UNP in this matter, yet they are very estranged from each other. While the political differences are not that significant - they both have an open economy and a resolution to the ethnic conflict on their agenda - there is a harsh dispute going on between them due to the government-opposition juxtaposition. As a consequence, the deadlock of the last six years continues to exist.

The third block, the JVP, is a nationalist-Marxist party which led two uprisings in 1971 and from 1987-89. While most of the time banned in Sri Lanka, it is now a legal party that won one seat in the 1994 elections and holds ten seats at the moment. It could thus well be that this party emerges as a third force. Traditionally, the SLFP, now the PA, and the UNP changed in power. This dichotomy of two large blocks standing opposite each other would cease to exist, if the JVP became much stronger.

A problematic development is the emergence of the Sinhala Urumaya (SU), a very nationalist Sinhalese party which competed in the last elections for the first time and gained one parliamentary seat. They are responsible for evoking hostile sentiments against the Tamils, manipulating people particularly in the southern areas. It may well be that similar to 1983 a backlash occurs which could then no longer be controlled by the government. While the 1983 riots against the Tamils were in fact organised by the government, the present government would certainly abstain from such measures. Still, it may not be capable of protecting the Tamils, if nationalist sentiments grow too strong.

T.W.:

I do not see the risk of such a development. The Sinhala Urumaya holds only 1.48 %, even in face of the very extreme situation Sri Lanka finds itself in. In the first half of 2000 more than 100 people were killed by suicide attacks in Colombo. In view of these facts I find the way how the Sinhalese population reacts to and copes with the situation quite stunning. On a very limited scale assaults can and do happen, e.g. when the Bindunuwewa Rehabilitation Camp was attacked and 24 people were hacked to death. Yet, a special publicly conferring commission of inquiry, the Human Rights Commission and a special police task force are all dealing with this case. So I cannot see why such a backlash should occur.

M.S.:

We have to look at the situation very closely. Nationalist sentiments are much stronger now than they were 5-6 years ago.

T.W.:

In the elections half a year ago the nationalists only gained 1.48 % and in the meantime have even been weakened. With internal factions fighting each other, the Sinhala Urumaya is not considered a risk any more.

M.S.:

In January 2000 the Norwegians officially entered the frame, attempting to mediate between the LTTE and the Sri Lankan government through "shuttle diplomacy". On 1 November 2000, Norway's Special Peace Envoy to Sri Lanka, Erik Solheim, who normally holds negotiations with Anton Balasingham, the official spokesman of the LTTE, residing in London, met LTTE Supreme Velupillai Prabhakaran in person. Mr. Solheim later announced that the guerrillas were serious about peace and ready for unconditional talks. He also spoke to President Chandrika Kumaratunga, the Tamil Foreign Minister of Sri Lanka, Mr. Kandiragama, other government officials as well as UNP leaders.

However, the peace process also seems to have arrived at a deadlock. On 8 June 2001 Erik Solheim was inexplicably kept out of talks of Norwegian Foreign Minister Thorbjørn Jagland with President Chandrika Kumaratunga. The Sri Lankan government appears not to be very pleased with the results of Mr. Solheim's work. Obviously there is the impression that in his talks with the LTTE he should have addressed their demands more vigorously.

By now the LTTE have put forward three demands in order to enter peace negotiations with the government. Firstly, they want the ban on their organisation to be lifted. However, since the LTTE are internationally widely proscribed, it remains difficult for Sri Lanka to remove the ban. Recently there was the proposition that the ban could be lifted temporarily during the talks. Yet, for several years Sri Lanka has demanded other countries to outlaw the LTTE and they have done so: India after the assassination of Prime Minister Rajiv Gandhi, Malaysia, the USA, Canada, and lately the UK in February 2001. Clearly, it is now very difficult for the Sri Lankan government to remove the ban within the country.

The second demand is that hostilities be stopped. The LTTE declared an official ceasefire on 24 December 2000 which was in force until 24 April 2001. While it used to be declared for one month and then extended again, the LTTE refused to do so on 23 April 2001. Immediately afterwards hostilities resumed: the army launched a new offensive on 24 April 2001 in order to regain lost territory, especially in the area of Pallai. However, the LTTE were able to fight back and the army suffered heavy casualties. At least 300 soldiers were killed and the same amount of men lost their legs through LTTE minefields. The army had to pull back to their original positions. At the moment there is a standstill in the conflict, with skirmishes in the east and the north. While there is no major offensive going on right now, soldiers and civilians are killed in small numbers almost every day.

In this context the question arises where the LTTE get their weapons from. After their establishment in 1972 they obtained armament from attacks on police stations and army camps. During the 1980s they were supported by India, and especially by the government of Tamil Nadu. While being interested in having guerrilla groups in Sri Lanka, the Indian central government did not espouse the idea of an independent Tamil state as this would have created problems for India itself. In the late 1980s the LTTE were then backed by the Sri Lankan government to force Indian troops out of Sri Lanka. Nowadays considerable sums of money come in through remittances from Tamil refugees living abroad. They continue to buy a considerable number of weapons on the open market.

T.W.:

With their ships they have the possibility to transport the weapons to the eastern coast off Mullaittivu from where they load them on smaller boats and bring them into the Vanni.

M.S.:

They are of course in contact with many other guerrilla groups. They bought e.g. 30 missiles from the Afghan rebels. Thus, getting weapons does not really pose a big problem for the LTTE, given also that they keep receiving tanks, rockets etc. from the Sri Lankan government. Finally, the LTTE demand that the ban on certain items in the northern Vanni area be abolished.

T.W.:

In spite of the ban, however, it was and is possible to import most of the restricted commodities except outlawed items like batteries into the Vanni for personal purposes. The heavy restrictions or complete ban on certain articles are supposed to prevent people from dealing with them. At the same time the Sri Lankan government is bringing in thousand of tons of basic commodities, especially food, to allow for life to be possible in the Vanni and to avoid malnourishment there. This situation is quite unique: in a kind of civil war situation the government takes measures to sustain the people in the Vanni.

M.S.:

The government is very much aware that a large part of the food and medicine brought into the Vanni goes to the LTTE, so they try to supply as little as possible. This attitude and the ban have been an important issue of discussion. On 22 March 2001 a news report dealt with the "relaxation of control on articles taken to uncleared areas", i.e. those areas not under government, but LTTE control. An army press release read: "The ban on the following items has been lifted with immediate effect - please instruct the officers concerned immediately." The list contained 24 items, such as fruitjuice packets, soup cubes, coconut oil, aspirin-based tablets, vitamins, anti-Malaria pills, rice, cereals, eggs, noodles, all sorts of soft drinks, wine, cigarettes, soap etc. According to the army these items could therefore be brought into the Vanni again. Yet, in fact there has never been a ban on these products, which even high-ranking army officials did not seem to be aware of. What the above-mentioned press release was actually supposed to highlight is that these items could now be brought into the Vanni in unlimited quantities, irrespective of personal use. Due to this great amount of confusion it is hence extremely difficult for civilians crossing the border between cleared and uncleared areas to bring in goods as the single officer-in-charge at the checkpoint can seldom judge what is banned and what is not. Therefore, usually they will not let people bring in any items which might eventually be used for or by the LTTE.

T.W.:

Looking at the historical and political survey above, one might get the impression that living in Sri Lanka is dominated by the conflict. In general, this is correct with regard to the repercussions everyone has to face, like the high taxes, especially the national security levy. In this respect everyone is affected, but in day-to-day life I would not say that the two communities are always fighting against each other. All in all, we find a kind of civil-war situation in which the government, however, is also taking care of the Tamils.

M.S.:

We indeed face a peculiar situation in Sri Lanka: quite a large area is controlled by a guerrilla organisation and still supported by the government, which brings food and medicine into an area where they know exactly that everything is distributed by the LTTE. This situation has its roots in the time before the Indian peace-keeping forces came to Sri Lanka in 1987. When the army launched a major offensive on the Jaffna Peninsula and a large number of civilians were killed, there was an outcry in India, resulting in the Indian army flying over the Jaffna Peninsula and sending down food packages. The Sri Lankan government is now very much aware that, if there was too much suffering in the Vanni, the world would react with a similar outcry. So these aspects may be the motives for supporting the population there.

I.3. Humanitarian situation

Internal displacement is a very serious problem in Sri Lanka. The number of IDPs amounts to 800,000, i.e. 4.5% of the population. These people are mainly Tamils and Muslims: 20% of these communities are internally displaced. In 2000 the government provided food assistance to 674,000 persons, the criteria being a monthly family income of less than SLRe 1,500.-, i.e. approx. USD 17.-. The average monthly income in Sri Lanka is about USD 60-70.-. The monthly food subsidies amount to SLRe 1,200.-, which are less than USD 15.-.²

² see: Table of total population receiving food aid in January 2000, in: NRC/Global IDP Project: Profile of Internal Displacement in Sri Lanka, June 2001, p. 56

These figures do not hold for the present situation anymore as there are most probably more people receiving food aid. Due to the LTTE offensive of March and April 2000, which won them control over the Elephant Pass and most of the southern parts of Jaffna Peninsula, a large number of people were displaced again. 66,000 persons had already been displaced in Jaffna before 1995. The capture of Jaffna City by the army in November 1995 set off a new displacement of 400,000 people, i.e. half of the 800,000 inhabitants of the peninsula. Of these about 170,000 stayed in the eastern part of the peninsula and 230,000 crossed to the LTTE-controlled Vanni region. Even one year later, in November 1996, the population on Jaffna was still [only] 400,000 people, half of whom were not living in their own houses. The LTTE offensive of March 2000 caused new displacement affecting 172,000 persons.

Being under army control at the moment, the Jaffna Peninsula is a site of heavy fighting. The infrastructure there has been destroyed massively. 80% of the houses are in shatters and there has been a mass exodus of skilled workers. With its 500,000 inhabitants, of which 280,000 are children, Jaffna is the centre of the government's resettlement efforts. Yet, resettlement is very difficult as after having been taken over by the army large parts of the peninsula have been declared a high security area where people cannot be settled. Since 1996 217,000 families have been resettled on Jaffna.

The government aims at reducing the food aid and at forcing people to return to their original homes. Sometimes strategic considerations may lie behind such measures as the objective to make army camps more secure can be achieved by having civilians live nearby. Many refugee camps and welfare centres are located very close to army camps.

The Vanni, i.e. the LTTE-controlled area, is virtually isolated from the rest of the country. Agricultural yields have increased in cleared areas, however, there are only few marketing opportunities with the economic and transportation infrastructure almost non-existent in this area. Population movements are severely restricted. While the current population figures in the Vanni are not known, the majority of people living there are undoubtedly IDPs. In 1999 the Commissioner General of the Central Services, who is responsible for food aid, claimed that only 162,000 people were listed as IDPs in the Vanni. At the same time the Government Agents (GAs) of the region gave the number of 297,000 refugees. As a result of this release, the two GAs from Mullaittivu and Kilinochchi were accused of giving false information and were transferred to Colombo. It has to be remembered that all the GAs in the region work under the supervision of the LTTE who prefer higher numbers as they want more food and medicine from the government. The GA, taking care of the people, is of course also interested in receiving and distributing the appropriate food rations whereas the Commissioner General of the Central Services in Colombo, who has to pay for the aid efforts, wants to have low figures of IDPs. This constellation has to be borne in mind when looking at the varying numbers given.

T.W.:

The welfare centres for IDPs in the Vanni, formerly run by the UNHCR, are now administered by the government. On the one hand food is being brought to the Vanni, but on the other hand rice and cash crops are at the moment also sent from the Vanni into the cleared government area. While in some remote areas there are cases of malnourishment, people in general can manage to live in the Vanni.

M.S.:

The eastern province is also economically isolated and affected by sporadic fighting. As has been mentioned, the ethnic composition is one third Tamils, one third Sinhalese and one third Muslims, giving rise to ethnic tensions and LTTE attacks. One can find a pattern of cleared, uncleared and semi-cleared areas there, regions under LTTE control, regions where the LTTE rule at night and the government troops at daytime. The eastern province counts a population of 1,2 million, including 60,000 IDPs in 22 welfare centres.

In Trincomalee some people have been internally displaced for more than ten years and continue to live in refugee camps. Some of the IDPs returned under a UN programme after the Indian Peacekeeping Forces had come to Sri Lanka in 1987. There was a process of returning Sri Lankan refugees from India to Trincomalee. While many could never return to their homes, some of these people have been resettled to their original villages, but have been displaced again later.

The border areas, especially army-controlled Vavuniya, see an on-going, massive influx of refugees. Almost 100,000 IDPs live in the region where economic activity has virtually been abandoned, too. Another problem is that several welfare camps in Vavuniya are very close to army camps, thus placing civilians in the line of fire.

[The situation in Colombo will be discussed under the topic of internal flight alternative in chapter II.5.]

Generally speaking, half of the IDPs in Sri Lanka have been displaced at least three times. The welfare centres are in fact refugee camps. At present the government spends SLRe 12 million per month on its welfare centres. More than 180,000 persons live in 423 government welfare centres where they are confronted with the following problems: lack of options, attitude as dependents, loss of self-esteem, breakdown of the family, alcoholism, drug abuse, depression, suicide, crime. Sri Lanka has the highest rate of female suicide world-wide. At least 75 % of the population in the welfare centres are women and children. Physical abuse, sexual harassment, manipulation by groups with a political agenda and low school attendance rates pose serious problems for them. Due to the conflict the literacy rate in Sri Lanka has dropped during the recent years.

T.W.:

I would like to emphasise that schooling is free in Sri Lanka. There is the problem of neglect of children in the welfare centres, but when I visited the camps in Vavuniya three weeks ago I could hardly find any children around in the morning as they were all at school. Still, some parents do neglect their children or send them off to work, yet it is not a general phenomenon.

M.S.:

It should not be forgotten, however, that some parents cannot even afford to buy school uniforms, pencils, books etc. which in these cases may be the reason for not sending their children to school. Furthermore, there is a lack of teachers not only in the Vanni, but also on the Jaffna Peninsula.

T.W.:

Normally the government provides the textiles for the school uniforms for free and people only have to sew the uniforms. Funding many projects in the area, UNHCR would immediately provide the children with uniforms if this issue was really a matter of concern. In practice I do not see a problem there at all.

Next to internal displacement and the harsh situation at the welfare camps the other main problem directly affecting the population are the landmines. It is assumed that there are 300,000 landmines on Jaffna Peninsula alone according to GTZ (German Technical Cooperation) The UNDP landmine-clearing programme was stopped due to the on-going fights. The UN agencies in fact withdrew most of their staff from Jaffna in March 2001.

I.4. Human rights situation**Freedom of movement**M.S.:

Freedom of movement is restricted in the Vanni and Vavuniya districts. Before 1996 the LTTE severely limited the movement of Tamils under their control. People who wanted to leave to government areas had to pay a high exit tax. In most cases only one family member was allowed to travel. In 1992 a system of travel passes was introduced in Vavuniya, with a three-months open pass being issued to all residents. Nowadays the system is very complicated and the validity of these documents ranges from a few hours to three months. In the Vavuniya district there are fourteen types of passes allowing people to enter, stay or leave. Queuing for them can take several hours. At the moment persons intending to leave the Vanni have to pay a small fee for being issued a pass. Some people in welfare centres used to get passes for leaving the centre for four hours only, but in July 2000 these passes were finally replaced by a three months restricted pass, ordering them to stay in Vavuniya and to return to the welfare centre at night. (T.W.: The government uses the argument that these people have to be protected and taken care of, yet in fact this rule is an infringement of their freedom of movement and it would have to be abolished, should anyone challenge it at court.) A similar pass system has been introduced in Mannar as well.

Travelling from Vavuniya to Colombo without a pass creates a considerable risk. Corruption does exist in Sri Lanka, yet one would need a lot of money for bribing the staff at the checkpoints.

T.W.:

It has to be mentioned in this context that five to six months ago in early 2001 some soldiers took bribes for issuing unlawfully obtained „Passes for South of Vavuniya“. Although these bribery incidents only happened on a small scale, immediate action was taken .

M.S.:

Since Vavuniya town is under government control all the passes are issued by government authorities. In November 1999 the LTTE were only a few kilometres outside Vavuniya, but never inside the city, whereas the northern part of Vavuniya district is controlled by them.

T.W.:

Yet, it has to be pointed out that the whole civil administration in the north is working under LTTE supervision. Even the post offices are open and working in the uncleared areas. It is also possible for civilians to cross over to some extent. While Sinhalese are not allowed by the LTTE to live in the Vanni, being an ethnically cleansed area, Tamils do come to Vavuniya City. Given the appalling medical situation in the Vanni, the Vavuniya Hospital is very important. Due to the war the government cannot maintain normality in the uncleared area in terms of medical supply and therefore many people come to Vavuniya for medical treatment, but also for buying goods. The LTTE charge SLRs 200.- for the passage, which is less than USD 3.-.

M.S.:

In order to leave the LTTE area one therefore has to buy their permission, but they do not issue any passes.

For going to and leaving Jaffna one needs clearance from the Ministry of Defence. In late July 2000 the City of Trinco started operating twice a week, bringing people from Point Pedro at the northern coast of the Jaffna peninsula to Trincomalee and vice versa. The ship has capacity for 350 passengers and an ICRC person is present on each trip. The ship departs from Trincomalee in the early evening and usually comes to anchor at Point Pedro at daybreak, people changing to small boats thereafter. When I travelled to Jaffna on this ship last year the passengers were traders, people who went to the peninsula for voting on 10 October 2000 or back to their families after getting medical treatment or collecting money in Colombo - in short, civilians with various reasons for their journey. The army also offers flights to and from Jaffna for civilians, but they are of course very expensive and also involve certain dangers. Some civilian flights have been shot down by the LTTE.

T.W.:

As for communications from Jaffna to Colombo, there are normally two flights per day, but this number has been reduced lately due to lack of passengers. The single flight costs about USD 70.-. There are no ships operating between the two cities since Palk Strait is very shallow. Such a trip would only be possible for small boats, but not for a normal vessel.

M.S.:

People living in army areas must have a special ID card issued by the military in addition to the national identification card. In Jaffna such special military identification cards must even be carried by children as young as ten years. This measure was taken because of the infiltration of the peninsula by LTTE members.

The above-mentioned requirements make it very difficult to travel within the country, especially to and from Vavuniya and to Jaffna. It is only possible after an extensive security check. Tamils from the north therefore meet many difficulties when they want to go south. If they do not have a permanent pass or someone with a permanent pass who is willing to sponsor them, they cannot go at all. People from uncleared or semi-cleared areas or from welfare centres are usually denied passes for entering the south. If somebody from Vavuniya wishes to go to Colombo, it usually takes half a year to get clearance - if s/he gets it in the first place.

T.W.:

Despite these obstacles some people obviously managed to cross the frontline from Vavuniya to the Tigers, like the journalist Mary Colvin. Upon arrival she, however, was shot at and severely injured, even though she enjoyed the support of the LTTE. On the other hand, those people who have been brainwashed to commit suicide attacks also managed to get to Colombo somehow. In conclusion, it nevertheless has to be stated that in practice it is almost impossible to travel from Jaffna through the Vanni to Colombo and vice versa.

M.S.:

As regards freedom of movement in the southern parts of Sri Lanka, one would be checked very often when going from Colombo to Vavuniya, Trincomalee or Batticaloa. A major well-known checkpoint is Welikanda where even diplomats might have problems to get through. Sometimes not even lorries are allowed to pass, so that the cargo has to be reloaded onto another lorry. It is thus very difficult to enter Colombo without being checked.

T.W.:

Another question is what kind of checks people have to undergo at these checkpoints. It is not the case that people are put to scrutiny with the help of a database, so that somebody who is wanted by the police or the army still might make his/her way from Trincomalee or Batticaloa to Colombo. On the other hand, it is not possible for such a person to get through all the way from Jaffna or Vavuniya to Colombo as during the process of obtaining a pass s/he will be checked by the National Intelligence Bureau which does have the appropriate database. Although most of the suicide bombers came from the east, it is still easier to enter Colombo from there than from the north.

South of Colombo, on the road to Galle or Matara, there are hardly any checkpoints, i.e. they are not manned. Right outside Colombo one can equally find checkpoints without staff which of course in case of certain events will be deployed there.

In Colombo itself there are many checkpoints and certain roads are closed at night, e.g. the main road, Galle Road, passing the house of the Prime Minister. [for more information on Colombo see Ch. II.5.]

TortureM.S.:

In general, the human rights situation in Sri Lanka has improved considerably since the new government came to power in 1994. The current administration is committed to establishing high human rights standards. Yet, human rights abuses still occur quite often. After the army captured Jaffna in November 1995 about 600 people disappeared there in 1996. Reports about the mass grave at Chemmani could also be found in Western media. Recently there was the case of a woman being tortured and raped in Mannar.

What is of concern is that human rights cases are not followed up by the government appropriately. I only know of two cases where the culprits were punished for committing human rights abuses. It is often difficult to monitor such cases as they take place in remote places or there are not enough testimonies. Whenever somebody comes into detention, it is most important to make the police admit that this person has been arrested. Otherwise there is a severe risk that s/he disappears.

The establishment of the Committee to Inquire into Undue Arrest and Harassment (CIUAH) is definitely a positive step. Due to the existence of the CIUAH the police is quite alert and pays attention. Up to now the CIUAH is not that well-known in Sri Lanka, yet if cases are reported to it, it seems to work quite well and it is certainly more effective than the Human Rights Commission. Most interestingly, the CIUAH was given the same duties as the Human Rights Commission at a time when the Commission already existed. (T.W.: The Human Rights Commission, established in the early 1990s, was also quite effective for some time. In 2000 its head office was newly staffed with commissioners and since then some of the field officers in Trincomalee, Batticaloa, Vavuniya have been complaining about the inefficiency of the head office. However, according to latest information by Mr Vavindren from the Human Rights Commission in Vavuniya there has been a change towards more effective work in the meantime.)

T.W.:

Consisting of ministers and human rights activists the CIUAH or Anti-Harassment Committee plays an important role, e.g. in the Bindunuwewa case or the Mannar rape case. The offenders of the latter are in custody, so measures have been taken in this case. (M.S.: The trial, however, will in the end not be held in Mannar, meaning that the witnesses will face the problem of having to travel to the court. The costs, the need for passes etc. will create difficulties for them.) Moreover, it will take a long time before the trial comes to an end, the slowness of the proceedings thus constituting the main problem. The Attorney General, Kamalasinghe, keeps complaining about the lack of manpower at his office. In spring 2001 a newspaper article reported that some soldiers were convicted for extra-judicial killings in the JVP time, i.e. 1987/88. If such cases - LTTE related or human rights related - drag on for years, it is tantamount to justice being denied. In torture cases, which are normally brought up by the media, the witnesses very often cannot be heard anymore for they have sought and been granted asylum abroad in the meantime. Therefore the perpetrators got away in a number of cases, yet it seems that the government does not want to accept this anymore and does not want to deal with allegations from the international community any longer. With the Interministerial Standing Committee on Human Rights another permanent body has been created, which seeks for progress in the aforementioned cases.

If somebody comes into detention, in more than 90% of cases the Human Rights Commission is notified, even in Vavuniya, the most notorious city in terms of human rights violations. The ICRC, too, confirmed that information about arrests is normally passed on within 48 hours in accordance with legal obligations. Still, disappearances do happen, affecting about twelve people in 2000, seven or eight of whom were from Vavuniya. In these cases, people have been tortured so severely that they died. Clearly, torture is still a serious problem in Sri Lanka.

In this context the difference between the normal criminal procedure and the procedure according to the Prevention of Terrorism Act (PTA) or Emergency Regulations (ER) has to be underlined. Whenever the latter are applied, i.e. upon a detention order somebody is held in police or army custody for a considerable time, the risk that this person falls victim to torture is quite high. As easy as it is for the police to apply the Emergency Regulations, given that there are no legal possibilities to challenge them, they are very reluctant to apply these laws. They only use the Emergency Regulations in suspected hard-core terrorist cases and not in cases of "mere suspicion", not even in Batticaloa, Trincomalee or Vavuniya.

Under the normal criminal procedure law the arrested person is detained in "fiscal custody", where no interrogation is carried out. If the police want to interrogate this person they have to address the magistrate again and the person has to be formally handed over from the prison authorities to the police. When brought back again, s/he will be given the chance to be produced before the judicial medical officer by the prison authorities who do not want to be blamed for any torture incidents. Therefore interrogation and - in this context - torture are made very difficult under normal criminal procedure law, which is applied in 98 % of all arrest cases in Colombo. If the police find evidence against the arrested, e.g. weapons, the suspects will be handed over to the Terrorism Investigation Department or the sixth floor of the Criminal Investigation Department (CID), or the Crime Detective Bureau (CDB) in former, which has been dissolved in the meantime. In these cases the Emergency Regulations will definitely be applied.

What has to be stressed is that almost all of the people who have been dealt with under PTA and ER are in the position to prove this fact. After a detention order has been issued the person in question is mostly produced before a magistrate and a judicial medical officer. The ICRC and the Human Rights Commission (HRC) visit the conflict-related prisoners. Yet, even when they observe traces of torture, the ICRC can only report to the government. Still, they are thus able to prove that the person in question has been held and has been visited. There of course may be cases where somebody has been so severely tortured that s/he is not being shown to the ICRC right away.

While legally the family of a detainee has to be informed, this is only being done properly in 60-70 % of the cases in Colombo and in about 50% of the cases in Vavuniya. If somebody is missing, the relatives would immediately go to the ICRC or the HRC and report there. The respective person could then be found in their files.

As far as unauthorised places of detention are concerned, it happens only in some few isolated cases that people are taken in to army camps and kept there. In such cases the relatives or neighbours would then again immediately complain to the ICRC or the HRC, serving thus at least to a certain extent as safeguards against torture and disappearances.

It is possible to apply for political asylum in Colombo. Every week two to three LTTE cadre prisoners at Kalutara prison submit applications and they all are capable of proving their claims. Attaining evidence of detention is no problem at all.

Wilfried Buchhorn:

Still, in a small percentage of cases - 2-5% - the facts may remain unclear and the assessment thus difficult.

M.S.:

(Responding to a query submitted to ACCORD prior to the seminar) I do not know a prison in a location called Maruthanaj, approximately 15 kilometres off Colombo. The Forum for Human Dignity informed me that there is no place called Maruthanaj, but a prison in Mahara 15 km from Colombo, where LTTE members are also held. Maybe that is the one referred to.

II. Groups at risk

I.1. LTTE affiliation

T.W.:

LTTE combatants are without any doubt a group at risk under the Emergency Regulations. As for retired combatants, in 1999 the government forces gained a lot of territory in the Vanni during Operation Ranagosa. In the aftermath Tamil farmers, who had previously been fighting with the LTTE, but had retired after six to seven years of service, were merely asked to register. Only in a very few cases people were sent to so-called rehabilitation camps, e.g. Bindunuwewa. However, the fences are open there and during their nine-months to one-year stay people are taught, e.g., how to repair an engine or are given lessons in carpentry or the Sinhala language.

M.S.:

It should, however, not be forgotten that after all people were killed in these rehabilitation camps.

T.W.:

The Bindunuwewa Rehabilitation Camp has frequently been visited by the ICRC and has been considered a very good approach towards resocializing the former LTTE cadres. While legally they could be arrested under Emergency Regulations, this is not being done in practice. When the government forces regained the Jaffna Peninsula in 1995, the hundreds of thousands who had had to cooperate with the LTTE before were not affected by any harassment or mistreatment. However, as has been mentioned above, some hard-core LTTE members, who re-infiltrated the peninsula, disappeared during 1995/96 and almost certainly have been killed by the army.

The LTTE issue certain papers which could prove affiliation with them if one is checked by government officials, army officers etc. The LTTE combatants have got identity tags and suicide capsules around their necks which could identify them as fighters of the LTTE. Furthermore, the LTTE have introduced special booklets for their cadres and their families, entitling them to attain higher rations of the food commodities sent by the government. Sometimes these booklets are produced before courts or refugee authorities in Europe.

Somebody who is actively working for the LTTE outside the LTTE controlled areas will definitely be at risk. This includes not only persons involved in the armed struggle, but also informants who e.g. follow a minister and give information about his movements to the LTTE, so that they can carry out a suicide attack. These people would be at risk of being arrested, intensively interrogated and even severely tortured.

M.S.:

Civilians who are obliged to work for the LTTE (see chapter II.2.) are normally not threatened by the army. Nevertheless, the exception may occur when the army assumes that this person has knowledge about the LTTE which they could be interested in. This may particularly apply to the civilians on the north-eastern coast unloading the boats that bring in weapons for the LTTE.

As the LTTE are known for their child soldiers, who have partly been forcibly recruited, children can be suspected of being LTTE members as well. To point it out once more, in Jaffna children as young as ten years need the special ID cards issued by the army. Checks in Jaffna have been reduced in the last two years. However, while there are less checkpoints, people are still harassed and sometimes arrested. Given that the LTTE recruited children as young as 12 years of age, children can also be arrested due to suspicion of LTTE membership. On their way to school, however, they usually go in groups and are seemingly not at risk of being stopped and threatened by the army.

T.W.:

Whenever schooling is affected - an issue which is traditionally very important for the Tamil community - there will be a huge outcry in the press and public. Despite some few cases of arrest, neither the ICRC nor UNHCR perceive a real problem. Although such incidents can occur, the day-to-day life is not affected, which also shows in the fact that LTTE leader Velupillai Prabhakaran's children have just passed their O-level exams in the Vanni.

M.S.:

Furthermore, sometimes relatives of LTTE members are arrested, thus at times also constituting a group at risk. The threat they are confronted with very much depends on the [specific] situation. For instance, when a suicide attack is carried out, family members of the attacker may be arrested as the police assumes they knew about the scheme. They may even be subject to torture in such cases.

People bearing scars may find themselves in a problematic situation. In particular scars stemming from mines or bullets might indicate that the person has been involved in fighting. One Tamil asylum seeker, limping after having been hurt in an attack, had a lot of troubles at Colombo airport due to his handicap when returned from Switzerland. Scars might also be an indication that the person has been tortured, evoking the question why s/he has been in prison. Having been released does not constitute a proof that this person is innocent, so that it might be assumed that there is still a reason for arresting this person. All in all, scars might thus clearly cause problems for the individual.

It has to be borne in mind with regard to all administrative procedures that there is no standard form of procedure. How it is being done rather depends on the officer in charge and the circumstances. So it is impossible to state that if a person has a scar, s/he will be automatically at high risk, but certain people would think that this person is from the north, is a Tamil, has been involved in fighting or has been arrested for a certain reason. These assumptions then may create problems for the individual.

T.W.:

A scar would always be a reason for concern as the question arises: Is s/he a Tiger? As is the case with somebody coming to Colombo without any documents, returnees with scars will be checked thoroughly and the National Intelligence Bureau - or, as it is nowadays called, the Directorate of Internal Intelligence (DII) - will be notified in order to find out if this person is wanted by the police. They might also investigate where this person comes from and this may take up to three or four days. If there is no result to this inquiry, however, the person has to be released. Otherwise, s/he has to be produced before the magistrate, if not taken in under Emergency Regulations. However, as has been mentioned before, the police are very reluctant to apply these Regulations.

M.S.:

Cases of mass detention occur when suicide attacks of the LTTE are feared in Colombo. We are facing such a situation right now as the government is anxious that the LTTE might again attack in the south. They have done so several times, killing President Premadasa on 1 May 1992, bombing the Central Bank and various government buildings. At the moment the situation is quite risky. Female Tamil Tigers, who were arrested in April 2001, said that there were actually suicide missions in Colombo. In such situations the reaction are mass arrests, especially in the so-called lodges, which are cheap hotels inhabited mostly by Tamils from the north.

T.W.:

As regards the penalty for supporting the Tamil Tigers, aiding and abetting terrorist activities is an offence punishable under the PTA and the ER. There are supporters of the LTTE inside and outside Sri Lanka. If somebody has worked for the LTTE abroad, this constitutes a legal grey area problem. The Emergency Regulations explicitly deal with "terrorist activities inside and outside Sri Lanka", so that on the one hand such a person has committed an offence. On the other hand, lawyers dealing with these cases point to the principle of territory according to which these crimes do not fall under Sri Lankan jurisdiction. If somebody is dealt with under the ER or the PTA, s/he can be put into remand prison until the conclusion of the trial, i.e. for a considerable period of time, even up to 18 months. Actively supporting the LTTE outside the area under their control, like harbouring members in Colombo, will mean imprisonment for years.

Release on bail may occur in special cases. It is possible that a person who is suspected to have LTTE connections and was put into prison is released on bail after some kind of "pre-trial" to wait for the final sentence. Already under the normal criminal procedure law court proceedings take a long time, yet usually the defendant is released on bail, even in cases of murder or child abuse. Under the PTA there are no provisions for bail under normal circumstances. Yet, according to special regulations under the ER, the person can be released on bail, if s/he is not under strong suspicion anymore and if the Attorney General does not have any objections. In such cases people afterwards have to report to the police regularly.

Wilfried Buchhorn:

The question of how LTTE combatants should be treated with respect to the exclusion clauses cannot be answered generally. There is no general rule which could be applied to the LTTE as such, but one has to check the individual case for elements which would justify the application of the exclusion clauses. One has to be aware of the several stages of involvement and ask the following questions: Is the person a member? Has s/he personally committed a crime? One therefore has to take a more specific approach to this issue.

T.W.:

The key question is always whether the person can be sent back to Sri Lanka, and not whether s/he will be granted asylum or some other form of permanent stay. If somebody has to expect torture in case of being returned, this person simply cannot be sent back.

Wilfried Buchhorn:

We will provide on the application of the exclusion clauses, but in any case it should be borne in mind that the focus has to be put on specific individual elements rather than on general statements.

II.2. Persecution by the LTTE

M.S.:

There is not only voluntary, but also forced conscription to the LTTE. Someone who was forced to join them, spent e.g. several weeks with them and then escaped, may definitely be at risk. When talking about forced recruitment one usually refers to people being trained to fight for the LTTE. Just like the army, which still suffers from 15,000 cases of desertion, the LTTE are in need of manpower. The scale of forced recruitment, however, is not known.

While not being taken in by the LTTE, civilians are also forced to get involved with them in that they have to provide food, build bunkers etc. The same thing happens to civilians with regard to the army: they are obliged to clear shrubs next to the roads and to cut bushes and trees for safety reasons. Yet, this obligation of working for the army or the LTTE is not implemented in the form of official recruitment, hence normally does not create any problems for the persons concerned with the other side respectively.

I have not heard of any cases where people in the welfare centres were approached by the LTTE and, not willing to join them, had to escape from there. Nevertheless, I deem it perfectly possible that the LTTE infiltrate the welfare centres, especially smaller refugee camps, and cause people who do not want to serve with them to flee from the camps.

T.W.:

The staff of one of the Vavuniya camps, Veppankulam camp, reported cases of such LTTE infiltrators. Yet, they are not in the position to force anybody in the welfare centres into joining them as they themselves are at high risk there.

The LTTE prefer convincing people to join the movement, e.g. by performing theatre shows in the Vanni region. They even sometimes wait in front of the schools, trying to approach the pupils. Forced recruits are almost useless to them. To a certain extent they always rely on the population in the Vanni and forcing people into the movement would affect their acceptance rather badly.

M.S.:

The level of support for the LTTE among the Tamil population is difficult to assess. Talking about politics among and with Tamils is a considerable problem, in view of threats from all kind of groups. Whatever one may say would be directed against someone: the LTTE, the EPDP or the army. It can be assumed that whenever the army attacks civilians, the support for the LTTE becomes very strong as they are perceived as protecting the civilians. On the other hand, in a period of peace the support for the LTTE diminishes. When asked about the situation under the army as compared to the times of LTTE control, people in Jaffna were rather embarrassed and hesitant to answer this question. Some, however, stated that under the LTTE there was a high degree of discipline: no cases of robbery, theft etc. due to harsh punishments. The LTTE seem to be the most disciplined guerrilla group in the world. Their 46-year-old leader Velupillai Prabhakaran is regarded as a hero among many Tamils, having established the group at the age of 17.

T.W.:

Regarding blackmailing people into supporting them, it quite often happens that the LTTE seize boats from Muslim fishermen or, as in one recent incident in Mutur, a number of computers in order to extort money. However, conscription by blackmailing or exerting severe pressure on family members hardly ever occurs.

As for defection of children from the LTTE, their training camps are closed and guarded and might even be surrounded by minefields. Still, the University Teachers for Human Rights (UTHR)-Jaffna, who play a significant role in assessing what is happening in the Vanni, have reported a number of escapes. Normally, people would flee to their home villages and families. As their story becomes public then, the LTTE would usually not dare to come after them and recruit them again. *(Remarks: due to severe shortage of fighters the LTTE has increased the pressure on the population to join them during the last months. Credible reports say that more and more Tamil families in the LTTE-controlled areas find themselves under severe pressure from the LTTE to put members of the family (mostly children) to their disposal. For example University Teachers for Human Rights -Jaffna (UTHR-J) reported about a lot of such incidents in recent month. Now it cannot be upheld anymore that these instances are isolated cases. The pressure on the families is not subtle anymore it has become more and more massive. It is obviously coordinated by the LTTE leadership.)*

In 2001, 33 official defectors from the LTTE have so far been reported to have surrendered to the armed forces. They go through the rehabilitation process at Bandarawela in the Up-country or on Jaffna, but the main question is where they settle afterwards. In Colombo, under normal circumstances there is no chance for the LTTE to find them. Minor combatants will only be in danger of getting killed if they go back to their home villages. If these people stay in Vavuniya or Jaffna, the LTTE, not being able to move freely, do simply not have the means to follow up all the individual cases, despite having a special branch for this purpose. However, high-profile defectors, e.g. area leaders, are at serious risk and have to hide.

M.S.:

People who had problems with other Tamil groups or even political parties, like TELO or EPDP, may also be at risk. If they worked against these organisations, they might face problems even in Colombo as these groups do have a presence there.

II.3. Religious minoritiesM.S.:

The conflict in Sri Lanka is an ethnic one, so that it cannot be said that Buddhists are fighting Hindus. Religion is not the issue there. Both Hinduism and Buddhism are very tolerant beliefs. Most of the Sri Lankan Buddhists go to Hindu temples from time to time and there are Hindus attending Christian churches as well.

There have been attacks on small Christian sects in the south of Sri Lanka. People have been accused of wanting to convert Buddhists to Christianity, but one cannot speak of Christians being generally at risk.

II.4. Women

T.W.:

Sexual harassment of women is an important issue. While according to the law during an interrogation a female police officer has to be present at all times, this is in practice not always the case. The Mannar torture cases which occurred in March 2001 would not have happened had a female constable been there. Such rape cases do occur, yet according to human rights lawyers they are rather rare.

M.S.:

In a situation where a search operation is carried out in a lodge and hundreds of Tamils are arrested women are certainly more vulnerable. Yet, it cannot be said that women in general are at risk.

As regards female returnees, if they return on their own, their situation certainly differs from the one male returnees find themselves in. (T.W.: Normally, they would be picked up and taken care of by their families. If this is not the case, it might also happen that they are approached by men at the airport). Usually women do not live on their own in Sri Lanka. The residents at the lodges in Colombo are either families or single men. Single women would face tremendous difficulties in finding accommodation or a job. (T.W.: Many young women and girls work in the suburbs of Colombo, especially in the textile industry, and live in some kind of homes. Yet, it is also possible for single women to stay at the lodges in Colombo.) There are also some organisations looking after women where they can turn to after being sent back.

II.5. IFA and repatriation

M.S.:

Colombo is very often regarded as an internal flight or relocation alternative by foreign governments. While half a million Tamils are living in the city, I, personally, would not describe Colombo as a melting pot. Instead of a process of "melting" there are rather areas almost exclusively inhabited by Tamils, like Wellawatte in the south, Bambalapitiya or Kotahena. Tamils have to pay high rents because of the security risk involved: according to the emergency laws, any given apartment or house in which an attack has been planned can be confiscated by the government, even if the owner was not at all involved. Therefore many Sinhalese renting out houses or apartments take precautions, increasing the rents for Tamils.

T.W.:

Whether Colombo can be regarded a safe area for LTTE defectors depends on the place where they settle down: Is it in a Tamil area? Is it close to a lodge where a lot of people from the Vanni come to? After all, Colombo is not that large with its 1.2 million inhabitants. The coming and going in Colombo together with plain coincidence may put such a person at risk. To be on the safe side, it would be more advisable for them to go to Kandy, Matale or another town in the Up-country. As regards IFA, the focus should more be laid on these cities and less on Colombo.

M.S.:

Relations are very important in Sri Lanka. Wherever one goes, whether to Matale, Kandy or Colombo, one will be regarded with suspicion if one is a Tamil coming there alone. Even when living on one's own in Colombo, one needs contacts to find accommodation, to get a job etc. Since there are thus always people knowing about the individual, it is not possible that this person disappears without anybody noticing.

What may happen is that the other person might then fear to go to the police and inquire about the disappeared one.

Documents

In order to be able to live in Colombo Tamils need to have the following three essential documents: an ID card, a registration and a "valid reason" for staying in the city.

Every Sri Lankan citizen over 18 years of age must have an ID card which they always have to carry with them. S/he has to be able to show it whenever checked, which is often the case in Colombo. The ID card is usually only issued once and then kept for a lifetime, without the necessity of having it renewed. It is therefore possible that a 60-year-old person has an ID card showing him/her with a school uniform. Due to this unlimited validity, even if a person has been living in Colombo for twenty years, the home address given on the ID card would still be some place e.g. on Jaffna Peninsula.

T.W.:

Sinhalese and Tamil ID cards differ in terms of the used language: while the former are only in Sinhala, the latter are issued in both Sinhala and Tamil, so that the person can right away be identified as Sinhalese or Tamil.

M.S.:

Recently a number on the top of the ID card has been introduced, indicating the province the holder comes from.

T.W.:

The authorities in Colombo now face severe problems as many Tamils claim to have lost their ID cards, wanting to be issued a new one with the Colombo code.

M.S.:

In order to obtain an ID card one has to produce one's birth certificate. This requirement makes it very difficult, if not impossible, for many Tamils to obtain an ID card. For instance, the 100,000 children who born in India, where there parents had sought refuge, and then came back to Sri Lanka do not have any birth certificates and hence will not be able to get an ID card. The new 1997 regulations allow children without ID cards to go to school, but they may not take the A or O levels tests.

(T.W.:

In practice is not so difficult to obtain an ID card. Some organisations claim that it may take up to half a year to get one. I, personally, have come across one case in which the birth certificate could not be found. However, in 98 % of cases the documents are available. If somebody was born in India this might be a problem, but I do not know of any such returnees from Germany or Switzerland or any other Western country.)

M.S.:

Even though registration with the police is not a legal requirement according to the State Attorney and a ruling by the High Court, in practice Tamils do need it at the checkpoints and have to carry it with them as well. (T.W.: The registration form bears a photo and only confirms that the person is living under a certain address, without proving the identity.) It is an A3 folder in which all the inhabitants of a house or apartment are registered. Whenever someone leaves or moves into the house, the police has to be notified. The validity of the registration is limited and differs in terms of duration. Whether one gets a registration valid for one month or for three months depends on various factors, e.g. which police station one turns to.

If people do not have this registration the consequence may be a thorough inquiry and custody of some hours or even one or two days. I know of two Tamils in Colombo who do not have this police registration and might not need it, given that they are fluent in English and Sinhala and know that it is no legal requirement. Yet, in general, everyone coming to Colombo as a returnee or from other parts of Sri Lanka urgently needs to be registered with the police.

T.W.:

Many of those Tamils who have been living in Colombo for years do not even know about the existence of the registration. In practice it is mainly the newly arriving ones who are considered a security risk by the authorities and are therefore checked for their registration.

M.S.:

Although there is no corresponding legal provision, either, one must finally have a paper giving a "valid reason" to live in Colombo, like a work ID card from one's employer or a student card. If a Tamil is stopped by the police without any identification paper showing that this person has a reason for staying in Colombo, s/he will be told to leave the city, to go to Jaffna. Persons who return from abroad or who come to the city "merely" for safety reasons may face problems, e.g. their registration may not be renewed or they may even be arrested.

T.W.:

As regards returnees, they very often do not enter Sri Lanka with a proper passport, but with an "ICOM (Identity Certificate Overseas Missions) which they have been issued by the embassies and which they can keep. This new procedure was implemented about a year ago. After thereby getting into Colombo one has to register as soon as one has found accommodation.

M.S.:

Yet, due to the confiscation laws finding accommodation proves problematic for Tamil returnees in the first place. Therefore they may resort to one of the many lodges in Colombo. They cannot find other accommodation, either because it is too expensive, or because people are not willing to rent out their places to them due to the security risk mentioned above. It should normally be possible to register with the police under the address of the lodge. Yet, there have been cases in which the registration was denied or where people would only obtain it after bribing the officers.

T.W.:

Normally returnees easily find accommodation. People who were able to go abroad, i.e. to pay about USD 10,000.- for illegally leaving the country, are not the persons most harshly affected. The financial situation of the returnees is no issue of concern to UNHCR. They are privileged in that they receive considerable financial support from the returning countries: e.g. DM 400.-, i.e. USD 180.-, from the German authorities or Swiss Francs 1,000.- from Switzerland. With an average Sri Lankan income of USD 60-70.- a month, these sums amount to what a family can save in two or three years. The ones facing severe problems are the IDPs who live on US cents 40.- a day in the camps. Given this poverty they have huge difficulties to come to and settle down in Colombo.

M.S.:

Of course people could and can usually not afford to pay USD 10,000.- for going abroad, so that formerly the whole family would normally pay for the journey of the eldest son. Today mainly people with relatives abroad can afford to leave Sri Lanka as their relatives pay for them. Usually they are meant to pay back these travel costs. If returned, they therefore end up with a huge debt.

Lack of documentsM.S.:

The greatest fear in Colombo are LTTE suicide missions. Whenever the threat of such attacks increases, the situation of people without documents or a valid reason to be in the city becomes more difficult and they come under the suspicion of being LTTE members and under the risk of being detained.

Returnees who do not possess the described documents are under great risk of prolonged inquiry for up to a week. As can be read in the Swiss Refugee Council report of June 2000, returnees in interviews stated that, if a person is found without documents, s/he will be detained. All but one of the interviewed persons had been arrested at least once, with the time of detention ranging from some hours to seven months. People who are more afraid of the police and therefore have an indecisive manner are seemingly more in danger of being extorted money, of being subject to corruption, of being taken in for questioning. Tamils who speak either Sinhala or English have usually less problems. In one case a Tamil, being asked several times to return to Jaffna, answered: *"I am Sri Lankan. I can live here. This is my home."* Knowing his rights and voicing them, he might face some problems, but the police do not really dare to touch him in the way they treat people who are in fear and willing to pay money on the slightest occasion.

T.W.:

According to information from several embassies' liaison officers at Colombo airport, 98-99% are leaving Sri Lanka with their own proper passports, meaning that they also had an ID card when leaving the country. The experience in Germany is that 99% of Sri Lankan asylum seekers do not have any documents, i.e. they claim not to have them anymore when applying. In some cases the German embassy sends a representative to the airport to welcome the returnees and finds that half of them have their ID card. Most of the people who do not possess one know the number of their ID card by heart as numbering follows a certain pattern, and includes a person's date of birth etc., thus creating a certain code.

Indeed, there are still some people who neither have a passport nor an ID card nor remember the details. They normally have to go to the Front Office and apply for a birth certificate there. The Front Office has been established with support from the Norwegian government and provides several services under one roof: the Registrar General for birth certificates, the Department of Registration of Persons issuing the ID cards. Even hailing from Jaffna or the Vanni would not constitute a problem since there are usually four copies of the birth certificate: one with the Grama Sevaka [(the eldest of the village)], one with the hospital - as it is obligatory for a woman to go to hospital to give birth -, one is sent to the Register General in Colombo and the last one is given to the parents. So the birth certificates are normally available and obtaining them does not create any problem. The Front Office contacts the Registrar General and one would get the birth certificate within one to two weeks. Afterwards one can apply for the ID card, yet in the meantime they issue a provisional ID card, i.e. a slip of the application form, with which one can also register.

From the experience of the German embassy registering, however, is even possible without any ID card altogether. Sometimes returnees would come to the embassy and ask for a document confirming that they have been living abroad for some time. The embassy staff then have the chance to ask them what has happened to them and find that these people are in the position to register. (Furthermore, people sometimes obviously do not want to get their documents because they maybe intend to go elsewhere. People can run into trouble, sometimes being responsible for it themselves. Coming back to Sri Lanka without even knowing their ID card number creates of course difficulties for them. Not following the rules might pose a problem.) The German embassy has so far not been asked to help a person with registering.

M.S.:

Registering without an ID card may depend on bribes, on knowing the officer-in-charge or having friends who know him etc. In general, it is much easier to register if one has an ID card. With the help of the Front Office it has been made much easier for Tamils from the north and east to obtain an ID card. In 2000, however, the Front Office did not issue any ID cards for half a year. Moreover, it is still rather difficult for Sinhalese to receive an ID card. The Sri Lankan newspapers very often contain letters of people who complain about having applied for one two years ago and still not having been issued it.

Forgery

The Immigration and Emigration Act defines leaving or trying to enter the country without the correct documents as a punishable offence. This regulation does not only apply to foreign citizens who try to enter Sri Lanka with false passports, but also to Tamils trying to leave with forged documents or to enter without any papers at all. Offenders are subject to arrest, custodial punishment and also heavy fines. If arrested under the Immigration and Emigration Act and not under the Emergency Regulations or the Prevention Against Terrorism Act, the person in question cannot be visited by the ICRC.

T.W.:

After having been amended, the Immigration and Emigration Act is tighter now than before. Forgery, leaving or entering the country with forged documents were made non-bailable offences, i.e. a convict cannot be released from prison after paying a bail. Nevertheless, it is still being done since there are two contradicting laws at the moment: the Bail Act defines these offences as bailable whereas according to the Immigration and Emigration Act they are non-bailable. So it depends on the magistrate dealing with the case whether a person is released or not.

At the moment the practice is not to release them on bail, so that Mr. Fernandopulle, Minister of Aviation who is also MP of Negombo, is pushing very hard that these people - 98% of them Tamils - be released. The amended Immigration and Emigration Act is considered a very harsh law. It came into force after the Western countries had asked the Sri Lankan government for an amendment as a deterrent to facilitators, earning incredible sums of money. (Now the Western human rights organisations keep criticising the Sri Lankan authorities for detaining these people under the amended law. On the one hand there is the problem of illegal migration, on the other hand the human rights situation, but the people involved remain the same persons.)

People going to the West for asylum purposes usually leave Sri Lanka on a valid passport and forged documents are rare, given that it is very easy to be issued a passport in Sri Lanka. An applicant would normally have to produce a birth certificate and an ID card, but in some cases people have also obtained a passport without an ID card. One can receive the new document even within 24 hours. Under normal circumstances it is therefore not necessary to forge passports.

However, forgery does occur with regard to visa used on direct flights, but it is very difficult to enter [Europe] with a forged visa, given the first gate checks at e.g. Frankfurt or Berlin airports. Right at the end of the tunnel connecting the aircraft with the airport, security personnel and border police are checking the arriving passengers from Sri Lanka. The checks when leaving Sri Lanka, on the other hand, are not very strict as the officers do not have any computers and electronic databases. In those few cases where forged documents are used they are all produced outside Sri Lanka. (M.S.: While forgery of documents is not common, there have been numerous cases in which people left the country with another person's passport.)

Risks for returnees

M.S.:

Tamils returning with a forged passport are of course under the suspicion of being a member of a guerrilla group, mainly the LTTE. There is a clear mistrust of the government against returnees, especially if sent back from those countries where the LTTE finds strong backing. A lot of news reports had it that the LTTE has strongholds in the following Western countries: the UK - where it is prohibited now -, Switzerland, Norway. People who are returned from these countries face the risk of being suspected of LTTE membership.

T.W.:

I have a problem with this statement. Have you come across returnees from the West who have been convicted as LTTE terrorists? I cannot think of a single case. So why should they be a prime target for this suspicion?

At the airport the returnees from the West are not under this suspicion and are not subject to scrutiny. In 90% of the cases people are being picked up by their relatives, whom I have to inform about the procedure the returnee has to go through at the airport: that s/he is produced before the magistrate and will be released afterwards. Given that 1/3 of the Tamils are living abroad, there are of course many Tamils frequenting the airport, yet I do not agree that they run a high risk of being arrested there.

M.S.:

The evidence given in my report for the Swiss Refugee Council of June 2000 leads to different conclusions.³ One indication to prove my point is the Swiss government's decision of October 2000 to pick up all the returnees at the airport due to security risks.

T.W.:

There have been mere allegations of such security risks. Arbitrary arrest does occur, but not to such a large extent. Returnees from Western countries, who have been living abroad for quite some time, might only be detained for some hours, but also for one to

³ The full report can be downloaded at www.sfh-osar.ch

two days. If the police arrests someone, they have to produce this person before the magistrate and this is also being done. The point is that people coming from the West are considered rich - an assumption which in comparison to the average income is also correct to a certain degree. The police might therefore attempt to extort bribes from these people.

Very often people come to the German embassy asking even for a document proving that they have been living in the West for a longer period of time. Since there has not been a single case of an LTTE suicide bomber who had previously been living in the West, returnees from Western countries are not under suspicion. In order to make people commit such an act, they have to be brainwashed, which is only possible if they are under the control of the LTTE in the Vanni or in the east. If somebody comes back from the West, it is quite sure that he is not a hard-core member or hard core sympathiser of the LTTE. What does happen, however, is that people contribute to fund-raising abroad. While the risk to be arrested for some hours or one to two days for all kinds of purposes is ever present in Colombo, I cannot remember a case where people were dealt with under the Emergency Regulations after having their identity checked by the National Intelligence Bureau. Under normal circumstances people returning from the countries in question for instance Norway, UK, Switzerland are not being dealt with under the Emergency Regulations, let alone the Prevention of Terrorism Act. This applies to 98 % of the returnees, whereas those suspected of LTTE affiliation would fall under the Emergency Regulations. The application of the Regulations would mean that they are not produced before the magistrate and detained on a so-called "Detention Order" by a higher police authority or the Ministry of Defence. This procedure is the absolute exception.

Bettina Scholdan:

Amnesty International Germany has published a short briefing in response to the analysis of the German Foreign Office, quoting the Forum for Human Dignity in that between August 1998 and March 1999 49 returned Tamils had been arrested according to the provisions of the Emergency Regulations and the Prevention Against Terrorism Act.

T.W.:

The German embassy is investigating into these cases at the moment. We cannot check all incidents, yet in some of these cases it proved not to be true that they were arrested under the Emergency Regulations, but under the Immigration and Emigration Act, e.g. because the passport was not correct. The information provided by the Forum for Human Dignity, which is close to the EPDP, seems somewhat problematic. In fact, many people have reported human rights abuses by the EPDP. I, personally, would never quote the Forum for Human Dignity, which I would not say about any other of the Sri Lankan human rights organisations. The German Foreign Office has also given some official information about the unreliability of the Forum for Human Dignity's statements to the administrative courts dealing with asylum cases.

M.S.:

I have the impression that it is a reliable organisation and that the information they provide is mostly correct. Maheswary Velautham, the Secretary, is now also a member of the Anti-Harassment Committee of the government.

The Swiss transit home for returnees**M.S.:**

The Swiss government funds a transit home for returnees which is run by the Sri Lankan Red Cross and situated in a Sinhalese suburb of Colombo, Nugegoda. One resident, who had been issued a new ID card, was arrested at a checkpoint one week later. The police considered his document a forgery as they could not imagine it to be possible for a Tamil to live in Nugegoda.

T.W.:

Even if they do not have an ID card, returnees can register with the police under the address of the home. The occupancy rate of the home, however, is only 10% of its capacity. In May 2001 only five persons were living in the house.

M.S.:

In the aforementioned interviews, carried out by the Swiss Refugee Council in December 2000, the returnees gave various reasons for not going to the transit home. First, some of them consider staying in a Sinhalese area a security risk. Secondly, although common practice now, returnees were earlier not picked up at the airport, even though it had been promised to them. Clearly, waiting at the airport for someone to pick them up increased the security risks for Tamils and many of them were arrested there.

When about three years ago a letter to the Sri Lankan authorities spread the rumour that one of four returnees sent back from Switzerland was an LTTE member, all inhabitants of the home in Nugegoda were arrested. While most of the arrested were held in prison for some days, one returnee was detained under the Emergency Regulations for six months, without being accused of any crime. In the end he was released with no accusation being brought against him at all. This incident clearly illustrates the government's mistrust against returnees.

Repatriation monitoring**M.S.:**

Repatriations are not being actively monitored at all by the Swiss authorities. In 1994 Sri Lanka, Switzerland and UNHCR signed the Agreement on Passive Monitoring which gives the arrested returnees the possibility to contact UNHCR or the Swiss embassy. However, there are of course a lot of cases where UNHCR did and does not know about people being arrested. As they were not allowed to make a phone call, nobody would know about them being detained.

For the June 2001 Swiss Refugee Council report I tried to locate and talk to as many returnees as possible and therefore also contacted the Swiss embassy. I managed to interview ten persons, but, as regards the majority of returnees, even the Swiss embassy does not know where they are and what they do. All but one of the interviewed had been arrested and questioned and had their papers checked thoroughly. It remains highly unpredictable whether some people would be dealt with under the Emergency Regulations upon return or not.

T.W.:

The German embassy is doing some sort of active monitoring, with a representative sometimes going to the airport, but in most cases by using the telephone, asking the immigration authority, the Criminal Investigation Bureau (CIB) at the airport and the magistrate about the returnees. The Immigration and Emigration Act is part of the normal criminal procedure law. If somebody is arrested under this Act, s/he is taken in and interrogated by the CIB and within 24 hours after the arrival has to be brought before the magistrate, which under normal circumstances is also being done. Then the magistrate has to decide whether this person is released permanently, kept in custody or released on bail. This decision is thus taken by a judge, not the police. If s/he is taken into remand, the police cannot get hold of this person anymore as s/he is handed over to prison authorities and kept in "fiscal custody" without any further interrogation.

The German embassy keeps track of the returnees as long as their documents and identity have not been checked. Once his/her identity has been established by the magistrate and it has been made sure that this person is not on the wanted list and s/he has therefore been released, it is true that one can only speak of passive monitoring from this moment onwards. People are told that they can contact the German embassy and it is then up to them if they co-operate. (Yet, normally the problem has been solved at this stage. What really does create difficulties is that the returnees have got rid of their passports, ID cards etc., so that they have no papers to prove their identity. People with proper documents usually do not have great problems. There is the possibility to apply for an ID card or a birth certificate in the target countries as well, but nobody takes this opportunity. If it were of great concern to them, people would provide themselves with the necessary documents, knowing that sooner or later they have to leave. After the asylum procedure they would normally have enough time to apply for the documents as they are not sent back immediately. Instead, they just go back to Sri Lanka and take the risk of getting into trouble with the authorities.)

M.S.:

While active monitoring is carried out until the person has formally entered Sri Lanka, there is no monitoring at all afterwards. If the person is arrested e.g. in a lodge and kept in prison for several months, it would not be known.

T.W.:

Normally people taken in by the police have the possibility to inform the German embassy, lawyers or human rights organisations. They are entitled to make a telephone call and can contact e.g. the Forum for Human Dignity which provides legal help. In fact, the possibilities for legal aid are better than for persons arrested under normal circumstance, e.g. as suspects of robbery. The possibility to contact the Forum for Human Dignity, the Forum for Human Rights etc. is restricted to conflict-related cases.

A lot of policemen are very reluctant to arrest persons against whom they do not really have hard evidence. They know that they will be exposed to pressure and troubles as the human rights organisations intervene, the press is informed, the Human Rights Commission is notified and the Anti-Harassment Committee may get involved. The human rights organisations have many possibilities to bring misbehaviour of the police forces to light.

M.S.:

Judging from the experiences in Switzerland, which started to return asylum seekers [to Sri Lanka] as early as 1994, repatriation involves several difficulties. In November 2000 new procedures were therefore introduced.

First, as has been mentioned above, all returnees are picked up at the airport by staff either of the Swiss embassy or of the transit home - a measure that has been taken in view of the many problems related to corruption and arrest at the airport.

Secondly, the way how returnees are provided with financial support has been changed. Formerly returnees were given a cash sum of Swiss Francs 300.-, tantamount to USD 180.-, when leaving Switzerland. After some weeks the Sri Lankan airport authorities in Colombo knew of course that all the returnees from Switzerland had this money, so that most of the people "lost" it there, i.e. it was extorted from them. In some cases people had to pay much more than these Swiss Francs 300.- in order to get out of Colombo airport. Now returnees are only given Swiss Francs 200.- cash and a bank account is opened in Switzerland which they can have access to in Colombo. Swiss Francs 1000.- are deposited on this account, so that the returnees can collect and keep their money. This means that the Swiss authorities acknowledge the fact that many returnees are confronted with financial problems in Sri Lanka. The costs for travelling to a Western country are very high, currently between USD 5000.- to 8000.-. Therefore this money is mostly borrowed, so that people who are not able to work in the West are heavily indebted when returned to Sri Lanka.

Finally, the aforementioned possibility of registration in the transit home has been introduced by the Swiss authorities only in January 2000. Previously it was not possible to register with the police without an ID card. Having inquired into this matter with the authorities at the Swiss embassy in Colombo, I still do not think that for a person not going to this transit home it would be possible to get a police registration without an ID card.

Another problematic issue has been the confiscation of identity documents in certain cases. According to the Forum for Human Dignity in Colombo the military took away documents particularly in Batticaloa. The so-called emergency certificates issued by Sri Lankan embassies abroad, which allow people to return to Sri Lanka and look like a passport, but are only valid for one travel, are taken away by the airport authorities as well.

T.W.:

It is not correct that they are taken away.

M.S.:

They have been taken away from several returnees.

T.W.:

The question is when. It happened before, but since November 2000 the German embassy has an agreement with the Sri Lankan side that these returnee documents, the so-called ICOMs, are not being taken away. In the beginning there might have been one or two cases where it happened nonetheless. However, in consultations with the Chief of Immigration himself the German embassy ensured that arrangements have been made that such confiscations are no longer carried out.

ANNEX 1

**Follow-up to Q&A session
Answers by Forum for Human Dignity**

- The regulations on death penalty and their current implementation

Once the death sentence is passed on a person, the President should direct the prison authorities giving a date and time of execution. But since 1977, the President has not executed that power. But as there was an increase of such crimes, the Government is considering the implementation of the law. In order to do so, the President would call independent reports from the Judge who passed the sentence, the Attorney General and the Minister of Justice. If all three recommend the implementation of it the President may have the execution carried out.

- Restrictions on freedom of movement: what kind of difficulties do persons meet trying to get the documents necessary for staying or moving in Sri Lanka? Is a special permission needed for getting into and out of Colombo? What is the situation of people who want to go from Jaffna to the south and vice versa?

This is a very irritating situation for the traveler. The process of getting the necessary document involves lots of hard ship for the public. The citizen should give details of his leaving station, destination and intended period and the purpose.

- The practice of ill-treatment and torture

There are isolated instants of ill treatment and torture, Human Right activities are concerned and alert about such cases .Little improvement seen.

- Implementation of the Emergency Regulations and Prevention of Terrorism Act of May 2000: is it common that the detainees are held in incommunicado detention under these regulations?

There has been erosion of Human Right protection as Amnesty International stated in the index 37/019/2000. The Kith and Kin of detainees are allowed to visit the latter with the letter of no objection from the Police. Under the ER 2000 many wider powers were given to the forces and its being indiscriminate misusing.

- Is there a prison in a location called Maruthanaj approx. 15 kilometres off Colombo?

There is no place called Maruthanej . Please check and report : there is a place called Mahara about 15 Km from Colombo. There is a prison there.

- How effective is the Committee to Inquire into Undo Arrest and Harassment (CIUAH) and a similar committee for torture complaints?

Quite effective. the forum forwards cases of arbitrary arrests and harassment to the President Committee and has got positive results

- The situation of women, esp. of those who became victim of sexual abuse

It is common and widespread and the victims suffer the social stigma and cannot move freely with the society.

- Is there a reasonable opportunity for Tamils and in particular so-called vulnerable groups like women and children for a sustainable livelihood (including basic health care)?

The Government provides basic health and education free of charge but in remote areas such facilities are not adequate.

- The education system

In war torn areas, remote areas and in refugees camps education suffers. Although it is mandatory to have access to free education in Sri Lanka.

- Do children as young as 13-16 years old become suspects of terror acts?

Yes, there have been some in the said age group who have surrendered to government forces.

- Is there a protection possibility for Tamils in India?

There are refugee camp in India the social service Dept looks after the refugees.

- How true is the statement that the military take away identity documents from young Tamils and, in order to get them back, Tamils are forced to do works like cleaning (clearing?) some areas?

This has happened particularly in Batticaloa, and as the Forum enlightened the President Committee, and the authorities concerned bonded labour has not been reported to us so far.

- What kind of risks may rejected Tamil asylum seekers be confronted with in case of their return? How are they being treated upon arrival?

They may face arrest on landing and be produced before the Magistrate. Ill treatment by custom officers and CID's have been reported when money was demanded from the deportees.

- Are there any safe places where applicants could be sent back to?

Not to our knowledge.

- Is it possible that returnees without valid documents are punished under the Emergency Regulations?

They are punished under Immigration and Emmigration Act.

- The status of para-military Tamil groups

They are armed groups supporting the Government. They carry weapon openly -for self defence in the North and East.

- The LTTE: the general situation in the LTTE controlled Vanni-area; information about its intelligence service and about (forced) recruitment to the LTTE (also age of enrolment)

We understand young students are recruited and they enter class rooms and lecture on their mission to attract young children. Conscription is reported.

- The regulations in the criminal code for affiliation with the LTTE and their implementation in police and court practice

As fighting against the state is treason, supporting the fighters also amounts to same.

- On what condition is releasing on probation possible? Is it credible that a person suspected to have LTTE connections and put into prison after some kind of "pre-trial" on grounds of denunciation is being released on probation after two years to wait for the final sentence?

Only provision available if a person is arrested under PTA if the Attorney General holds the facts are not amounting to frame changes, he will be released. But if the AG thinks otherwise, there is no provision to release him even as probation.

- According to UNHCR to which groups should exclusion clauses be applied? Which degree of involvement with / positions held within the LTTE is relevant in this respect?

As only the LTTE is proscribed in Sri Lanka any one affiliated to LTTE can be charged under PTA. Even failure to give information on LTTE is a punishable offence under PTA.

- Sanctions on people who in any way oppose the LTTE ideology or activities

Those Tamils who opposed LTTE ideology are faced with death threats in the North and East. And many Tamil political leaders paid for it with their lives.

- Is it possible to escape from the LTTE training camps? How well are they guarded? Does the LTTE actively search for (former) low profile LTTE members in Colombo?

Some have escaped. LTTE has announced death to the deserters.

- What is the penalty for supporting the Tamil Tigers?

Imprisonment up to five years

- Documents: is there a „D category„ with regard to driving licenses, and if so, is it valid for driving a small lorry?

D category stands for motor cycles they can't drive small lorries

ANNEX 2

Major military operations, 1995-2000

Riviresa I, October 1995, which gave SLA control over Jaffna City, the stronghold of the LTTE. The LTTE evacuated the whole population before the operation.

Riviresa II, May 1996, which expanded the control of SLA to the entire Jaffna Peninsula

Jaya Sikurui, May 1997, which served to clear the supply route from Vavuniya to Jaffna and dislodge LTTE from the Vanni

Sathjaya, July 1998, where SLA captured much of Kilinochchi town and surrounding areas. LTTE establishes itself at Mullaitivu after a successful attack of an army camp.

Rana Gosa I-V, 1998-99, where SLA in a series of operations continued to push LTTE out of the Vanni and to move the defense line further north

Unceasing Waves, October 1999, launched by LTTE. The LTTE regained control over the areas which were lost to SLA in previous operations and effectively pushed back the defence line

Watershed, October 1999, which served to regain control over areas lost to LTTE in Vanni, but mainly to secure the army position in Jaffna.

The Unceasing Waves and Watershed operations have been ongoing in Jaffna peninsula since December 1999, with huge losses on both sides. In May 2000, LTTE appear to advanced close to Jaffna town, which the army has held since 1995.

Source: DRC May 2000, p. 6, (corrections M.S.)