



CDR Background Papers on Refugees and Asylum Seekers

Background Paper on Refugees and Asylum Seekers from Sri Lanka

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This information paper was prepared in the Country Information Unit of the Centre for Documentation and Research on the basis of publicly available information, analysis and comment, and in collaboration with the UNHCR Statistics Unit. All sources are cited. 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.

PREFACE

Sri Lanka has been an important source country of refugees and asylum seekers over a number of years. This paper seeks to define the scope, destination, and causes of their flight.

In the first part, the paper provides a statistical overview of Sri Lankan refugees and asylum seekers in Western European States, describing current trends in the number and origin of asylum requests as well as the results of their status determination. This is followed by an overview of the situation of Sri Lankan asylum seekers elsewhere in world. The data are derived from government statistics made available to UNHCR and are compiled by its Statistical Unit.

The second part of the paper contains information regarding the conditions in the country of origin, which are often invoked by asylum seekers when submitting their claim for refugee status. The Country Information Unit of UNHCR's Centre for Documentation and Research (CDR) conducts its research on the basis of publicly available information, analysis and comment, with all sources cited.

Since substantial new developments are taking place in Sri Lanka, it is difficult to report with certainty on a situation in flux. For additional information and comment, please consult the Bibliography to this report.

1. Sri Lankan Asylum Applications and their Determination in Europe and North America: major trends

1.1 Introduction

This chapter provides a comparative overview of Sri Lankan nationals in Western European Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom. and North American asylum procedures, based on government statistics.

Due to a lack of common standards for the compilation of asylum statistics, the scope for any detailed comparison is limited. Thus, data may refer to individuals or principal applicants ("cases"), to those who submit a request for asylum or to those who are admitted into the asylum procedure. Persons fleeing

the former Yugoslavia who benefit from temporary protection are only included to the extent that they have submitted an individual asylum request.

It needs to be stressed that asylum statistics are not necessarily related to a change of residence. Thus, asylum applications may be submitted at the border where people seek to enter the country or from within the country by persons who have already established residence, e.g. as students or migrant workers. Similarly, people whose claims are rejected may not leave the country.

The statistics presented here refer to asylum applications of asylum seekers who arrived spontaneously and thus generally exclude resettlement. In the tabulations (see Annex), "Applications" refer to the number of asylum applications; "Conv. status" refers to the number granted refugee status (asylum) under the 1951 United Nations Convention relating to the Status of Refugees; "Rejections" refers to negative asylum decisions, whereas "Humanitarian" refers to the granting of a non-Convention or humanitarian status. Generally, the decisions refer to those made at first instance.

The recognition rates provided in Table 6a and 6b are based on the number of Convention status recognitions divided by the total of the number of Convention status recognitions plus the number of negative decisions. While this allows to make comparisons between countries, this also implies that the rates calculated here may differ from the ones provided by individual governments.

Lastly, in the tables, a zero may indicate that the value is zero, unknown, not available or not applicable. Some of the more recent data, including those for the United States and the United Kingdom, are preliminary and subject to change.

1.2 Summary of main findings

- During 1990-1995, some 3.7 million applications for asylum were submitted in Europe (75 per cent) and North America (25 per cent). The leading receiving countries were Germany (1.5 million applications) and the United States (674,000);
- During 1990-1995, some 363,000 asylum seekers were granted refugee status under the 1951 Convention relating to the Status of Refugees, 241,000 in Europe (66 per cent) and some 123,000 in North America. Countries which granted refugee status to the largest number of asylum seekers were Germany (93,000), Canada (87,000) and France (60,000);
- During 1990-1995, some 11 per cent of all refugee status determination decisions in Europe resulted in the granting of Convention refugee status, compared to 46 per cent of all decisions in North America. Countries with the highest Convention recognition rates are Canada (65 per cent), Belgium (31 per cent) and the United States (27 per cent);
- During 1990-1995, an additional 224,000 persons were granted a humanitarian status in Europe, almost equalling the number of Convention recognitions. Sweden granted humanitarian status to almost half of these (48 per cent);
- In 1995, some 320,000 asylum requests were submitted in Europe, equal to the number in 1994. In North America, some 175,000 asylum requests were recorded in 1995, almost the same as in 1994 (170,000);
- In 1995, Convention status recognitions were at the same level as in 1994: in Europe, some 48,000 persons were granted Convention status, in North America some 22,000;
- In 1995, an additional 38,000 persons were granted humanitarian status in Europe, down from 56,000 in 1994;
- During 1990-1995, some 98,000 Sri Lankan nationals applied for asylum in Europe, constituting four per cent of all asylum applications, 24,000 of whom applied in 1991 alone. In North America, a total of 24,000 Sri Lankan asylum applications were recorded (three per cent of all asylum applications), of whom 6,100 applied in 1992 alone.
- Of the 98,000 Sri Lankan asylum applications registered in Europe and North America during

1990-1995, Germany received the majority (30,000 or 31 per cent), followed by Canada (23,000 or 24 per cent), Switzerland (19,000 or 19 per cent), the United Kingdom (15,000, cases only) and France (15,000). In 1995, Germany's share had increased to 44 per cent (6,700 out of 15,200 applications), followed by Canada (2,400 or 16 per cent).

- During 1990-1995, the Convention recognition rate for Sri Lankan asylum seekers in Europe was more than double (27 per cent) that of the total asylum seeker population (11 per cent). However, recognition rates for Sri Lankans have steadily fallen from 41 per cent in 1991 to 12 per cent in 1995. In North America, the Convention recognition rate for Sri Lankans has been consistently over 80 per cent;
- In countries granting a humanitarian status, Sri Lankans were overwhelmingly accorded humanitarian status rather than Convention status.
- In 1996, Germany received 5,600 new Sri Lankan asylum applications, 875 Sri Lankans were recognized as refugees and 6,200 were rejected, including applications lodged in previous years.

1.3 Asylum applications: all nationalities (Annex Table 1 and 2)

In 1995, some 320,000 persons applied for asylum in Europe, about the same number as in 1994 (319,000). The countries receiving the highest number of asylum seekers in Europe are listed below (percentages):

Main receiving country (Europe) 1993 1994 1995

Germany	59	40	52
United Kingdom (cases only)	4	10	14
Netherlands	7	17	9
Total	70	67	75

Source: Annex Table 1 and 2

Whereas Germany has been the main recipient of asylum seekers for years, accounting for half of all asylum applications submitted in Europe, the United Kingdom experienced a significant increase in the number of asylum applications: its share increased from four per cent in 1993 to 14 per cent in 1995 (cases only). Together, the three leading receiving countries Germany, the Netherlands and the United Kingdom accounted for 75 per cent of all asylum applications submitted in Europe during 1995.

In 1995, the main three receiving countries were followed by France, accounting for six per cent of all applications, Switzerland (five per cent), Belgium (4), Sweden (3) Austria, Denmark and Spain (2 each) and Italy (1). Finland, Greece, Norway and Portugal each accounted for less than 0.5 per cent of the applications submitted during 1995.

In North America, the United States received some 80 per cent of all applications during 1990-1995. In the period 1993-1995, this percentage was even higher: between 85 and 90 per cent.

1.4 Convention status: all nationalities (Annex Table 1 and 2)

In 1995, some 48,000 persons were granted Convention refugee status in Europe, slightly more than in 1994 (47,000). Almost 50 per cent of all persons recognized as refugees under the 1951 Convention relating to the Status of Refugees were recognized by Germany (23,500 or 49 per cent) followed by the Netherlands (8,000 or 17 per cent), Denmark (4,800 or 10 per cent), France (4,500 or 9 per cent), Switzerland (2,600 or 6 per cent), Belgium (1,300 or 3 per cent), the United Kingdom (1,200 or 3 per cent, cases only) and Austria (1,000 or 2 per cent) (see Annex Table 2).

In North America, Canada received 20 per cent of all asylum applications in North America during 1990-1995, but accorded 70 per cent of all Convention status recognition decisions. As a result, Canada's recognition rate was more than double that of the United States (see below).

1.5 Humanitarian status: all nationalities (Annex Table 1 and 2)

In 1995, an additional 38,000 persons were allowed to remain for humanitarian reasons. The granting of humanitarian status was concentrated in Denmark (38 per cent of all humanitarian status recognitions in Europe), the Netherlands (28 per cent), the United Kingdom (12 per cent), Germany (10 per cent) and Sweden (9 per cent) (see Annex Table 1 and 2).

1.6 Asylum applications: Sri Lankan nationals (Annex Table 3 and 4)

During 1990-1995, almost 100,000 Sri Lankan nationals applied for asylum in Europe, representing almost four per cent of all applications. The following table shows the countries receiving most applications (percentages):

Main receiving country (Europe) 1993 1994 1995

Germany	27	37	53
United Kingdom (cases)	16	18	16
Netherlands	15	14	10
France	23	13	9
Total	81	82	88

Source: Annex Table 3 and 4

In North America, some 24,000 Sri Lankans applied for asylum during 1990-1995, representing some three per cent of all asylum applications. Canada received 96 per cent of all Sri Lankan asylum applications submitted in North America.

1.7 Convention status: Sri Lankan nationals (Annex Table 3 and 4)

During 1990-1995, some 22,000 Sri Lankan asylum seekers were granted Convention status in Europe, 97 per cent of whom were recognized by France (64 per cent) and Germany (33 per cent). However, whereas France's share in recognizing Sri Lankan asylum seekers steadily declined from almost 100 per cent in 1990 to some 28 per cent in 1995, Germany's share increased from 1 per cent in 1990 to some 69 per cent in 1995. In North America, 20,000 Sri Lankans were granted refugee status, practically all in Canada.

1.8 Humanitarian status: Sri Lankan nationals (Annex Table 3 and 4)

The number of Sri Lankan asylum seekers granted humanitarian status in Europe during 1990-1995 (12,000) was almost half the number of Convention recognitions (22,000). The United Kingdom granted exceptional leave to remain to two-thirds of all Sri Lankan nationals allowed to remain for humanitarian reasons in Europe, although this proportion has fallen to ten per cent in 1995.

In countries which grant a humanitarian status (Denmark, Finland, the Netherlands, Norway, Sweden and the United Kingdom), Sri Lankans were almost invariably granted humanitarian status rather than Convention status. Thus, in these six countries, some 350 Sri Lankan asylum seekers were granted Convention status in 1990-1995, compared to 12,000 who were granted a humanitarian status.

In 1995, the main countries granting humanitarian status to Sri Lankans in Europe were the Netherlands (35 per cent), Norway (25 per cent) and Denmark (18 per cent).

1.9 Convention recognition rates: all nationalities (Annex table 6a)

During 1990-1995, Convention recognition rates were comparatively high in Belgium (31 per cent), France (20 per cent) and the Netherlands (20 per cent), i.e. at least double the overall rate for Europe (11 per cent). Conversely, relatively low Convention recognition rates were recorded in Finland (2 per cent), Greece (5), Norway (2) and Portugal (4). In Canada, the total Convention recognition rate was some 65 per cent and in the United States some 27 per cent (see Annex Table 6a).

1.10 Convention recognition rates: Sri Lankan nationals (Annex table 6b)

During 1990-1995, the Convention recognition rate for Sri Lankan asylum seekers in Europe, 27 per

cent, was significantly higher than the recognition rate for all nationalities, although it dropped to 12 per cent in 1995.

During the same period, countries with the highest recognition rates were Canada (86 per cent), United States (57), France (51) and Germany (25).

1.11 Sri Lankan Asylum Seekers Elsewhere in the World

The most important causes of the flight of Sri Lankan refugees over the past thirteen years have been ethnic conflicts and inter-communal violence. The Tamils of Sri Lanka share linguistic, religious and political affinities with their Tamil neighbours in Tamil Nadu, India, home of some 55 million Tamils. When Tamil refugees began to flee Sri Lanka in 1983, India was their natural, initial destination (**Bastiampillai, B.**, July 1994, 2). Of the estimated 200,000 Tamils who have fled to India since 1983, some 63,000 have been repatriated and about 63,000 are currently housed in 122 camps in Tamil Nadu. The remainder live outside these camps (**UNHCR**, 6 March 1997).

In addition, some 10,000 Tamils were estimated to have spontaneously returned to Sri Lanka with the assistance of UNHCR in 1995 (**UNHCR**, 27 January 1997). Although most of the returnees were able to return to their villages, some were again displaced during the hostilities in July and August 1996, together with the local population in Jaffna, Killinochchi. Voluntary repatriation movements from India have been suspended since the resumption of armed hostilities in April 1995, and no return movements are expected to take place in 1997 until conditions improve (**Ibid.**).

In early August 1996, Tamil civilians, particularly internally displaced persons (IDPs), began fleeing Mannar Island and other areas in Eastern and Northern Sri Lanka, again for India. Although the numbers were small compared to the 1980s' exodus, officials in Tamil Nadu and Madras were concerned that the constant trickle of refugees arriving from Northern Sri Lanka could escalate at any time (**The Dinamalar Newspaper, INDNET.BGSU.EDU**, 12 August 1996). By the end of February 1997, some 7,500 Sri Lankan refugees had left for India from Sri Lanka since July 1996 (**UNHCR**, 6 March 1997).

In **Austria**, some 19 Sri Lankan asylum applications were filed during 1995 and in 1996, the number rose to 36. No Sri Lankans were granted Convention refugee status. No data are available on the number of asylum seekers allowed to remain for humanitarian reasons.

In **Belarus**, the State Migration Service of Belarus does not maintain any statistics pertaining to asylum requests received from non-CIS citizens. UNHCR-Minsk estimates however, that there are some 20 asylum seekers from Sri Lanka. Since Belarus has neither signed the Convention relating to the Status of Refugees nor started status determination procedures under its domestic Law on Refugees, there are no official records of recognitions, rejections or of asylum seekers that have been allowed to officially remain in the country for humanitarian reasons.

The **Czech Republic** recorded some 29 new asylum seekers from Sri Lanka in 1995, and only one in 1996. Three Sri Lankans were granted refugee status during this period (**Ministry of the Interior of the Czech Republic**, October 1996).

In **Romania**, some 30 Sri Lankans applied for refugee status in 1995, none of whom were granted Convention status (24 applications were rejected). In 1996, one Sri Lankan applied for refugee status; no Sri Lankans were recognized as Convention refugees, two applications were rejected and one was withdrawn.

In the **Russian Federation**, in 1995 and 1996, no new Sri Lankans arrivals were recorded seeking refugee status. However, there are some 949 Sri Lankans registered by UNHCR as asylum seekers on the territory of the Russian Federation.

The arrangement between **Switzerland** and Sri Lanka for the return of rejected asylum seekers was extended in April 1996 for another two years. Between 15 June 1994 and 31 December 1996, a total of 512 persons have returned under this arrangement: 300 during 1994 and 1995 and 212 up to the end of December 1996. In January and February 1997, 44 persons returned from Switzerland to Sri Lanka (**UNHCR**, 5 March 1997). UNHCR continues its passive monitoring of the returnees in co-operation with both governments (**Ibid.**).

2. Ethnic composition and regional rivalries giving rise to Sri Lankan refugees and asylum seekers

2.1 Principal political developments since August 1994

The election of the People's Alliance (PA) to form the government in August 1994 involved a transfer of power from the United National Party (UNP) that had ruled Sri Lanka for 17 years (**INFORM**, Sri Lanka Information Monitor, 15 February 1995, 1). This change of regime generated a great deal of hope for Sri Lanka, both inside the country and internationally. The PA's election campaign and the subsequent campaign leading up to the 9 November 1995 presidential election was based upon the party's commitment to bring about peace through a negotiated settlement of the ethnic conflict and its intention to abolish the executive presidency (**Ibid.**). In addition, respect for human rights and respect for the freedom of the media and of association were identified as areas of high priority (**INFORM**, 7 March 1996).

1995 was the year in which the ethnic conflict on the island reached new proportions: the 8 January 1995 cease-fire agreement with the secessionist Liberation Tigers of Tamil Eelam (LTTE or Tamil Tigers) came to an end with the LTTE pronouncing that their expectations for a political settlement had not been met; the resulting breakdown of peace talks with the Government on 19 April 1995; the launching of Operation "Leap Forward" in July 1995 by the Government, which for the first time since the renewed outbreak of fighting led to large scale displacement of the population in the North; the launching of operation "Thunder Strike" and later, Operations "Riviresa" II and III by the Sri Lankan security forces against the LTTE in September and October 1995; and the subsequent "capture" of Jaffna city, on 5 December 1995. The latter event brought to an end five years of LTTE control of Jaffna (**The Economist Intelligence Unit** (E.I.U.) Country Report, 1st quarter 1996, 7).

President Chandrika Bandaranaike Kumaratunga was anxious to emphasize that the victory was over the Tamil Tigers, and not over the 2.5 million Tamil population (**Permanent Mission of Sri Lanka to the UN in Geneva, Sri Lanka News**, February 1996, 4; **Frontline**; October 1996). The President spoke of "the waging of a war for peace", as the LTTE's campaign had for years denied the vast majority of Tamils and other citizens their fundamental rights and freedoms (**Permanent Mission of Sri Lanka to the UN in Geneva**, December, 1995, 1). The LTTE in turn launched a bombing campaign in Colombo in late 1995 (**E.I.U.** Country Report, 1st quarter 1996, 7). By late 1996, it became evident that the war was far from over, and the human rights situation throughout the country remained grave (**Human Rights Watch** World Report 1997, 182).

Following the capture of Jaffna city, the symbolic capital of Tamil Eelam, it took three more months to clear the Jaffna peninsula of rebel presence (**Far Eastern Economic Review**, Asia 1997, 205.). The leader of the LTTE, Velupillai Prabhakaran, withdrew his forces to their newly established Killinochchi headquarters, south of Jaffna. He called the defeat a "temporary setback" and vowed that the struggle for an independent Tamil Eelam would continue (**Ibid.**). Though Jaffna city and much of the peninsula had reverted to Government control, security authorities underestimated the LTTE's ability to launch armed terrorist attacks both within and outside the Jaffna peninsula. It took several thousand government troops to hold the territory, and the absence of land routes entailed formidable logistical problems for the Government. (**Far Eastern Economic Review**, Asia 1997, 205).

Feelings of insecurity heightened in the country in connection with the bomb attacks in Colombo after 20 October 1995 when the LTTE bombed Sri Lanka's two main oil depots, causing extensive loss of Government revenue and killing over 20 guards. On 31 January 1996, Colombo experienced its biggest bomb attack when a lorry loaded with explosives drove into the Central Bank building in the centre of the city. The damage to Colombo's financial district was extensive: some 100 persons were reported killed and over 1,200 injured (**INFORM**, January 1996, 3). On 24 July 1996, two successive bomb explosions in crowded commuter trains near Colombo killed some 70 persons and injured 500 others (**Daily News**, 25 July 1996, 1). Continuing to target remote army garrisons and patrols, the LTTE also overran the Mullativu army base in the Northeast, killing more than 1,500 soldiers and capturing several million dollars worth of arms and ammunition (**The Island**, 19 July 1997).

The Government retaliated a few weeks later. After fierce fighting in September 1996 that killed over

500 men on both sides, the armed forces pushed the LTTE out of Killinochchi (**The Daily News**, 26 September 1996). While the LTTE encountered heavier casualties than the government troops, analysts said that their fighting machinery was largely intact, as was their capability to wage guerrilla war. The LTTE retreated to the Mullaitivu jungle, from where it launched guerrilla attacks, often using suicide commandos (**Human Rights Watch**, World Report 1997, 182).

The conflict continued into January 1996, with reports of sporadic attacks on the army defense lines in Jaffna by small bands of LTTE guerrillas who remained in the area of Valikamam. The "disappearance" of an army helicopter with 39 persons on board while on a short trip from one army camp to another in the northern peninsula on 22 January was an indication that the hold of the security forces in the peninsula was tenuous (**The Island**, 23 January 1996). A suicide bomb attack in the centre of Jaffna on 4 July, in which over 25 people were killed and over 60, including Housing Minister Nimal Siripala de Silva were injured, once again demonstrated the helplessness of traditional security measures faced with LTTE suicide commandos (**Daily News**, 25 July 1996, 1).

After the 4 July bomb attack in Jaffna city, the LTTE is reported to have conducted public executions of suspected informers and have engaged in massacres and retaliatory killings of Sinhalese and Muslim villagers, torture and mistreatment of prisoners, forced conscription of children, and kidnapping (**Human Rights Watch**, World Report 1997, 183).

The intensification of the military conflict throughout the island has had severe implications for the civilian population. Increased security measures were introduced around all key military installations. The resulting heightened security has created difficulties, particularly for Tamils living in the South or travelling to the South. Polarization among the ethnic communities has also accelerated in the aftermath of these attacks. Several incidents of reprisals by security forces against civilians and by ethnic groups against each other have been reported. Schools were closed throughout the country for three months in November 1995 in response to requests from parents concerned about the safety of their children in the wake of threats to bomb schools and kidnap school children (**INFORM**, February 1996, 4).

The LTTE kept up a series of attacks on the security forces in response to developments in the Jaffna peninsula. The security forces, in turn, launched several counter-offensives. On 17 January, they launched a three-day operation code-named "Rivikirana" in the Batticaloa District and subsequently claimed to have destroyed several jungle-base camps of the LTTE (**The Island**, 18 January 1996, 1). While the Government armed forces increased their number in the North, the LTTE stepped up its operations in the Eastern province, committing the armed forces to respond to their attacks in both the Batticaloa and Trincomalee districts (**INFORM**, July 1996, 5). Up until February 1997, hostilities between Government forces and the LTTE have been continuing in the East and North of the country where several Government soldiers and civilians have been killed and many have been injured (**International Herald Tribune**, 3 February 1997).

2.2 Regional rivalries

Sri Lanka has a population of approximately 18 million people. The Sinhalese, the largest group, are Buddhists. Sri Lankan Tamils, including the Up-Country Tamils make up 18 per cent of the population and are predominantly Hindu (**Regional Surveys of the World**, November 1995, 970). Most Tamils reside in the northern and eastern portions of the island (**Mackenzie Briefing Notes**, December 1995). Sinhala and Tamil minorities of Sri Lanka have lived in close interaction with one another for centuries. At times, this interaction has been friendly, at times it has been hostile (**Canada-Asia Working Group**, April 1996, 43). The majority of the Sinhala population, which represents 74 per cent of the total population, lives mainly in the South and has a strong religious identity adhering to Theravada Buddhism. Within the southern population, however, there is a sizeable Tamil minority which has an interest in maintaining a secular constitutional state (**Ibid.**). In the East, there is also a sizeable Sinhala minority which has no interest in living in an ethnically centred Tamil State. Throughout the country, there are other important minorities which may or may not have an ethnic or religious base: Muslims, in both the North and the South, who are mainly Moors and make up some 8 per cent of the population; Christians, who are Tamils, Sinhala and Burgher, and comprise 8 per cent of the population; the Veddha who are animist indigenous people representing less than one per cent of the population; and the Burghers, an ethnic mélange of people equally representing less than one per cent of the population (**Canada-Asia Working Group**, April 1996, 44).

From the 1950s onwards, there has been a seemingly inexorable narrowing of Sinhala politics toward centralised and authoritarian rule. Meanwhile, the rise of Tamil ethno-nationalism has provided the mechanism that drove forward the Tamil diaspora (**McDowell**, 1996, 11). Measures to reduce the over-representation and influence of Tamils in official life were swiftly introduced and provided an immediate set of grievances on the part of the Tamil minority in Sri Lanka. Relative deprivation and social and economic disparities in both the North among the Tamils, and the South among the Sinhalese, have contributed toward the insurrectionary Eelamist movement in the North and the rise of Janatha Vimukthi Peramuna (JVP) violence in the South. For the Tamil minority, a Sri Lanka in which violent confrontation has become deeply entrenched and economic opportunities are severely limited, offers little hope for the future (**Ibid.**).

A major grievance underlying the ethnic conflict in Sri Lanka has been the perception by the Tamil minority that they have been excluded from the benefits of economic development (**Gunasekara**, October 1996, 19, 22). That is the sentiment expressed by the LTTE as well as the Up-Country Tamils who invoke a strong foundation of culture, language, religious and social norms, the existence of an economic base and a history of self-rule, and therefore resent being constitutionally bound under a unitary State dominated by a Sinhalese Government (**Arudpragasam**, 1996, 209-214). In August 1995, the Government of Sri Lanka unveiled a proposal for the devolution of power, offering a high degree of autonomy to all of the country's provinces. It was a proposal for democracy and decentralization (**The Economist**, 4 November 1995). The devolution package was welcomed enthusiastically by India and Western countries, moderate Tamils and the general population alike. The resumption of hostilities between the Government and the LTTE, however, caused the Government's proposal for devolution of power and a political solution to the ethnic conflict to be postponed while the Government increasingly focused on achieving military successes (**Ibid.**).

2.3 The situation of Tamil civilians

Northern Sri Lanka, comprising the districts of Mannar, Jaffna, Killinochchi, Mullaitivu and Vavuniya, has remained the scene of intense fighting between the LTTE, Government security forces and Tamil militant groups supported by the Government. The increased security measures in areas outside the North and East have led to great hardship for the civilian population, especially Tamils (**Information Monitor**, 7 March 1996). Large-scale cordon and search operations particularly after the bombing of the central bank in Colombo in January 1996, are a common feature, and human rights observers have complained of non-compliance with Presidential directives with regard to procedures to be followed when taking persons into custody (**INFORM**, February 1996, 4). After a suicide bomb killed more than 20 people in Jaffna in July 1996, residents complained of further harassment at army checkpoints such as at the Thandikulam check-point which monitors the passage of travellers to and from the LTTE-controlled North (**Human Rights Watch**, World Report 1997, 183).

Government forces insist on definite proof of purpose for visits to the South, including guarantees from family members and business associates (**INFORM**, July 1996, 4.). On some days, over 2,000 persons reportedly arrived at the checkpoint in Vavuniya, only to be turned back or directed to so-called transit camps in Vavuniya to await clarification of their claims (**Ibid.**). After the LTTE overran a military base in the Northeastern Mullaitivu district in July 1995, killing or capturing most of the garrison's 1,500 soldiers, army morale and respect for the civilians in Jaffna deteriorated, as evidenced by the re-occurrence of incidents of extrajudicial killings, "disappearances" and torture perpetuated by Government forces (**U.S. Department of State**, Country Reports, February 1997).

The armed forces and its Tamil military allies are said to be responsible for the harassment, and the "disappearance" of Tamils suspected of being members of the LTTE. There are many accounts of armed forces' retaliation against Tamil civilians for LTTE attacks against the armed forces that have resulted in casualties (**Canada-Asia Working Group**, April 1996, 46). There have also been reports of harassment of Tamil female detainees, including reports that women have been kept in detention at police stations for several days, without charge, and without a female officer being present (**Ibid.**).

Human rights abuses by the LTTE against Tamils not supporting the LTTE have also been well documented: these include harassment, intimidation, detention, torture, summary execution as well as "disappearances" (**Canada-Asia Working Group**, April 1996, 46). LTTE harassment of Tamils who oppose their activities has been known to extend outside Sri Lanka to Tamil expatriate communities in

Europe and North America (**McDowell**, 1995, 252). Of particular concern is the kidnapping of Tamil children to become LTTE fighters (**Ibid.**). Tamil human rights groups are concerned about the abuses perpetrated by the LTTE, particularly, "its cult-sacrificial death culture and rejection of democratic institutions" (**The University Teachers for Human Rights (Jaffna) (UTHR-J)**). The same source reported the following:

"We do know the anxiety of Tamil parents who await the return of their children from school fearing that they may be accosted and importuned to join the LTTE, and removed far away without a single trace. We also know the helplessness of parents, who if they happen to trace a child removed by the LTTE, are told not to become traitors to the cause and are sent away. Before they have reached an age of mature judgement, children are initiated into a culture of death in which they are taught that the greatest good is to sacrifice their lives for Tamil Eelam" (1995, 14).

2.4 Implications for Tamils in Colombo and the South

During 1996, police and army personnel throughout the country, and particularly in Colombo, the Northeast, and on the Jaffna peninsula continued to engage in sweeping cordon and search operations, which resulted in the arbitrary arrest and detention of Tamil civilians and the mistreatment and torture of detainees (**Human Rights Watch International** 1997, 184). Although many were released after identity checks lasting several hours to days in custody, the Government justified these checks on security grounds, while many Tamils claimed that the arrests were a form of harassment (**U.S. Department of State**, February 1997). These operations intensified following major incidents in which the LTTE was implicated (**The Island**, 8 February 1996, 1). Obtaining accommodation and employment in the areas in the South is becoming increasingly difficult for Tamils, and the requirement of registration with the police compounds this problem.

There have been several reports of disappearances among Tamil youths (**NGO Forum**, 7 March 1996). The creation, in October 1995, of a Civil Defence Force with a mandate to "support and assist the Police to maintain security in the country" has also generated fears of legitimizing para-military style interventions at the community level (**Information Monitor**, 7 March 1996).

Lodges in Colombo, that have traditionally been residences of Tamils have been a particular target of continuing search operations by the police (**INFORM**, February 1996, 8). For instance, on 5 February 1996, police searched some 35 lodges and detained 25 persons suspected of being LTTE supporters. Late in 1995, some 20 lodges which were found to have accommodated persons suspected of being involved in bomb attacks in Colombo were closed down on police instructions. There have been new reports of similar closures in 1996 (**INFORM**, April 1996).

2.5 The Tamil language: an issue of concern for Tamils

The 1978 Constitution guarantees the fundamental rights and freedoms of all citizens, including freedom of thought, conscience and worship and equal entitlement before the law (**Regional Surveys of the World**, 1995, 989). Buddhism has the foremost place among religions and it is the duty of the State to protect and foster Buddhism while assuring every citizen of the freedom to adopt the religion of choice (**Ibid.**) Article 21 (1) of the 1978 Constitution recognizes two official languages, Sinhala and Tamil. English is the official link language. Either of the national languages may be used by all citizens in transactions with government institutions (**Ibid.**). This does not hold true in practice, however. The traditional lack of Tamil-speaking persons in public offices, administrative positions and among police officers continues to be a great constraint to the provision of justice at the community level to Tamil civilians (**INFORM**, February, 1996, 8).

Education has been a key issue as Tamils from the Jaffna District have been successful in gaining access through open competition to Sri Lankan universities, and as a result, the professions (**McDowell**, 1995, 79). Past governments devised complicated measures and an imperfect system to redress the ethnic imbalance in admission. The result has been the immediate reduction in the number of Tamils gaining admission to university. This fostered a deep sense of injustice and a rapid increase in militancy among the Tamil youth (**Ibid.**). A "Sinhala Only" language policy had been introduced in the 1950s and Tamil children growing up in the 1960s and 1970s had no knowledge of Sinhalese, the language of the bureaucracy. Meanwhile, Tamil was of little use in seeking employment in the state

sector. Accordingly, it was those with a vernacular education who suffered most, whilst those with a good knowledge of English still had employment opportunities (*ibid.*). Tamil speakers still remain at a severe disadvantage in their dealings with the State in many contexts, at national and local levels (**Minority Rights Group**, January 1996).

2.6 Up-Country Tamils

Outside the context of the civil war, it is the Up-Country Tamils, of comparatively recent Indian origin who have been the most disadvantaged ethnic minority in Sri Lanka. After independence in 1948, two pieces of legislation rendered stateless and disenfranchised some 900,000 Up-Country Tamils, of whom some 85,000 do not qualify for either Indian or Sri Lankan citizenship (**Tilakaratna**, November 1996). Denied citizenship and representation renders the Up-Country Tamils one of the most neglected groups on the island (**Minority Rights Group International**, January 1996, 10). For decades, the working and housing conditions of these people have remained poor, and they have had less opportunities than others to improve their situation (**U.S. Department of State**, February, 1997). The Up-Country Tamils have been largely excluded from the political process and from employment opportunities in the government and the private sector, owing to their statelessness and inability to obtain national identity cards. Likewise, they cannot obtain travel documents and therefore, are generally unable to seek employment abroad (*ibid.*).

2.7 Muslims

Historically, the conflict between the LTTE and the Muslims started in the East (**Gunasekara**, October 1996, 23). Since 1990, the LTTE as well as other Tamil groups such as the Eelam People's Revolutionary Liberation Front (EPRLF) and the Eelam National Democratic Liberation Front (ENDLF) have launched attacks on the Muslims from Trincomalee down to Batticaloa. In 1992, the LTTE gave every Muslim in all parts of Jaffna, Killinochchi, Mannar, Vavuniya and Mullaitivu Districts which were under their control, the option of leaving the Northern Province within 24 hours or face death (**McDowell**, 1995, 22). Consequently, those Muslims who had lived with the Tamils in the North for generations, chose the former option, left their homes and belongings, and fled those areas. Many of them, have since then lived in camps for internally displaced persons (*ibid.*).

Muslim communities, particularly in the LTTE-controlled northern areas and in the East, continue to suffer from violence and displacement, imposed by the on-going state of civil war (**NGO Forum**, March 1996). In Batticaloa, there have been several incidents in which Muslim civilians were injured and their houses damaged during clashes between the armed forces and the LTTE. Several Muslim fishermen working in Kalkudah were injured on 7 February 1996, in a clash between the armed forces and the LTTE (*ibid.*). Tensions remained high in the Eastern area in February 1997 after clashes between Muslims (**INFORM**, February 1997, 12).

3. The National and International Legal Framework

3.1 The Human Rights situation in Sri Lanka

According to the Special Rapporteur on Extrajudicial, summary or arbitrary executions, reports received in 1995 indicated that the human rights situation in Sri Lanka remains precarious (**E/CN.4/1996/4**, 25 January 1996). During the May-June 1995 period, mutilated and tortured bodies of several persons were found floating in lakes near Colombo (*ibid.*) In addition, there have been allegations of extrajudicial killings of Tamils, 34 confirmed cases of disappearance, arbitrary executions resulting from incidents involving aerial bombardments by the Sri Lankan air force and shelling from military bases, and indiscriminate firing by navy personnel over the same period. All of these have caused numerous civilian casualties (**U.S. Department of State** Country Reports on Human Rights Practices for 1995, 1996).

According to the **U.S. Department of State**, extrajudicial killings ceased following the arrest of members of the security forces in August 1995, for their alleged involvement in the torture and eventual death of some 24 Tamils. In addition, the security forces have reportedly exercised greater restraint than previously employed after a similar renewal of conflict with the LTTE in 1990. However, the police, mostly Special Task Force officers and army personnel, committed at least 17 extrajudicial killings in the

Eastern Province during 1995, some as reprisals against Tamil civilians for LTTE attacks in which members of the security forces were killed or injured. In several of these cases, the security personnel who perpetrated these killings have not been arrested by the authorities (**Country Reports for 1995**, 1996). Other incidents included the indiscriminate killing of 25 persons in Kumarapuram, a small village in the Trincomalee District in 1995. The killings were attributed to the armed forces, who allegedly went on a rampage in reprisal for the killing of military personnel by the LTTE (**INFORM**, February 1996, 4). A military court subsequently convicted 14 soldiers of the murders (**Human Rights Watch**, 1996, 183). There were also reports of suspicious deaths of detainees acting as informants for security forces who died during operational missions against the LTTE (**U.S. Department of State, Country Reports for 1996**, 1997).

Other cases of disciplinary action taken against public officers include the identification by a Commission of Inquiry of some 210 armed forces personnel who were found to be responsible for the involuntary removal and disappearance of persons (**Sunday Leader**, 10 March 1996). The officers were subsequently sent on compulsory leave (**Presidential Decree**, No. SP/6/N/208/96, 11 January 1996).

Cases of unauthorized arrests, beatings, torture and killings by the security forces are reported and have become notably worse during the first half of 1996. Several incidents of rape have also been reported. Arrest receipts are not being issued by the Security forces and the access to places of detention of prisoners is most often denied (**UTHR-J**, 29 August 1996).

The British Refugee Council expressed concern about continuing reports of arbitrary arrests, detention, torture and ill-treatment of Tamil detainees, as well as poor prison conditions and the lack of facilities at detention centres (February 1997). At the beginning of June 1996, officials confirmed that 658 persons were being held under detention orders, 150 of whom were in Colombo. Of these detainees, more than 600 were Tamils, many of whom had been held without trial for prolonged periods, ostensibly due to non-availability of translations from Tamil of key documents (**Human Rights Watch**, 1996, 185).

According to **Amnesty International**, thousands of Tamils have been arrested since the resumption of the armed conflict in April 1995 and a significant number have been held without trial. Some 62 Tamils disappeared between April 1995 and the beginning of 1996 after their arrest by Sri Lankan security forces (August 1996).

By late 1996 and early in 1997, it was clear that the armed conflict was far from being over, and the human rights situation throughout the country remained grave (**Reuters**, 14 March 1997). The LTTE continued to launch attacks on security personnel and civilian "collaborators" on the Jaffna peninsula, and after an initial period of restraint, soldiers retaliated in kind. The Government remains unaccountable for many of its actions while the LTTE remains determined to block any attempt at peace or rebuilding (**Human Rights Watch**, 1996, 183). Indiscriminate shelling and bombing of populated areas by security forces have caused many casualties in the North and the East; the LTTE and security forces have engaged in senseless massacres of civilians and the use of civilians as "human shields" (**Reuters**, 8 February 1997).

Hostilities between government security forces and the LTTE continue to exact a heavy toll on the combatants as well as the civilian population, particularly in the North and the East (**Reuters**, 9 February 1997). Confrontations between the security forces and the LTTE, since the ending of the 100-day truce in April 1995, reportedly resulted in the death of approximately 3,500 people, including 1,200 government soldiers and 1,600 members of the LTTE, while the number of civilian casualties remains unknown (**Economist Intelligence Unit**, Country Report, 4th quarter 1996, 7). Over 200 Tamil guerrillas and at least six Government soldiers have been killed while 24 soldiers had suffered injuries during the Riviresa Two offensive launched on 19 April 1996 to clear the Jaffna peninsula of rebels (**Reuters**, 26 April 1996). During the first two months of 1997, the LTTE continued with sporadic attacks on small military encampments and ambushes on patrolling troops, especially in the Eastern Province and in the North (**Reuters**, 8 February 1997). In March, Government forces launched air and naval attacks on Tamil rebel jungle bases in the Northeast. Some 200 rebels were reportedly killed in the raid (**Reuters**, 14 March 1997).

3.2 The Government's proposals for devolution of power

While the armed conflict was continuing in the North and the East, President Kumaratunga on 3 August 1995 announced a government proposal for a new system of devolution of power to eight regions which would invest extensive legislative and fiscal powers to local governments, thereby providing ethnic minorities greater autonomy in governing their local affairs (**INFORM**, Special Dossier No. 2 on Devolution Package, 8 August 1996). Sri Lanka would become a "union of regions", each of which would have considerable authority over law and order, land settlement and education. The devolution package proposed a new constitution and the creation of an autonomous federated State comprising the entirety of the Northern and Eastern Provinces. It also envisaged a regional administrator for that area. The proposed new constitution would include provisions relating to the transformation of the Executive Presidency into a ceremonial one, while parliamentary sovereignty would be restored (**Gunasekara**, 1996, 112-188.).

The official draft of the package was released in January 1996, and the Parliamentary Selection Committee began its deliberations on it on 7 March 1996. Some issues of concern that remain to be resolved are: the unit of devolution; Tamil control of their own land; schools and police within the proposed package of constitutional reforms; and restrictions to the freedom of thought and conscience. In May 1996, the United National Party, UNP and the Democratic Union National Front (DUNLF), largely Sinhalese-based parties, declared that they were against any political structure that would affect the unitary nature of the Sri Lankan State (**INFORM**, May 1996, 9).

In spite of its verbal commitment to devolution of power to the provinces, the Government in 1995, took several steps, which have served to take away power from the Provincial Councils and concentrate it in the hands of the central government (**INFORM**, January 1996, 9). Illustrations of this practice are the transferring of all village officers (Grama Sevakas) under the authority of the central government, and the naming of some provincial schools as "national schools" and provincial hospitals as "teaching hospitals" while bringing them under the control of the central government (**NGO Forum**, 7 March 1996, 9).

The possibilities of the devolution package receiving the approval of parliament suffered severe setbacks from May 1996, when some Buddhist and other groups disagreed on key issues. At the same time, the Tamil parties have been holding fast to their demand for federalism and a merger of the Northeast (**INFORM**, September 1996). By November 1996, no political consensus on the devolution proposals had been reached as all the parties disagreed on key points (**Human Rights Watch** 1997, 182).

3.3 The Emergency Regulations and the Prevention of Terrorism Act

Although the Emergency (Miscellaneous Provisions and Powers) Regulations No 4 of 1994, of 4 November 1994 have remained in force in the North and the East, areas directly affected by the insurgency and in Colombo, human rights monitors have reported that there has been no evidence that the Government was using these regulations as in previous years to conceal extrajudicial killings or disappearances. The Sri Lankan Movement for the Defence of Democratic Rights reported that security measures were leading to the harassment of the Tamil community (**Tamil Information**, June-September 1996, 5) The Government amended the Emergency Regulations in September 1995 to require the armed forces to inform the nearest police station when it became necessary to detain a person for more than 24 hours, thereby bringing the Regulations in line with civil law (previously, persons could be held for over seven days without notice being given). Under the new Emergency Regulations, secret detention is prohibited, failure to disclose the place of detention is punishable, and security force personnel can be fined or jailed for failure to comply with the provisions of the legislation (**Ganesalingam**, March, 1996, 72).

In September 1994, Government created a committee to look into detentions under the Prevention of Terrorism Act and the Emergency Regulations. The purpose was to ascertain the number and identity of detainees under this legislation, to expedite cases, recommend releases, and improve conditions of detention. According to the **U.S. Department of State** however, the new regulations are rarely implemented and there is no mechanism to penalize officials who flout the directives (**Country Reports for 1996**, 1997). The legal safeguards in relation to arrest and detention, for example, the duration of detention, preventive detention, places and conditions of detention, remain suspended (**Information Monitor**, 7 March 1996). The Prevention of Terrorism Act, which gives wide powers of

these more effective instruments of human rights protection. These initiatives should be accompanied by a determined government policy aimed at holding the perpetrators of human rights accountable, thus ensuring that those who violate human rights cannot do so with impunity"

Human rights commentators have expressed the view that to date, the present government has not interfered with the functioning of the judiciary, and respected its judgments, in addition to the enactment of the Human Rights Commission with monitoring, investigative and advisory powers, and the strengthening of powers and accessibility of the Ombudsman (**Civil Rights Movement of Sri Lanka**, February 1996). One illustration is the Supreme Court's decision that Sivagnan Satkunanathan, a younger brother of Gopalaratnam alias Karikalan, second-in-command in the LTTE, be re-instated in his job as a clerk in the Telecommunications Department (**Sunday Times**, 4 February 1996). Mr. Satkunanathan had been arrested by military personnel in February 1991 and detained for sixteen months, first in Batticaloa, and then under the Emergency Regulations and the Prevention of Terrorism Act. The Supreme Court also ordered that he be paid back wages with effect from the date of his arrest (**ibid.**). In another matter in February 1996, a military court of inquiry found 14 soldiers guilty of killing some 24 civilians, including 13 women, one of whom was raped, and seven children, in the village of Kumarapuram. The incident took place allegedly in retaliation for the death of two soldiers in an LTTE ambush (**The Island**, 13 February 1996).

The **World Organization Against Torture (SOS Torture)** severely criticized the report of the Government of Sri Lanka to the Committee on the Rights of the Child, 9th Session, Geneva, May - June 1995. **SOS Torture** found that, provisions in Sri Lanka's domestic legislation were insufficient to protect children from torture, and the absence of effective means of redress for those who had suffered was regrettable. It also found that provisions in the Penal Code were not in keeping with the Convention on the Rights of the Child, for example, Article 75 on the age of criminal responsibility; Part II, Sections 13 and 14, arrest and detention of children; and the absence of specific provisions for the legal representation of children (September/October 1995, 6).

The Human Rights Task Force (HRTF) made an investigative visit to the transit camps on 17 February 1996, following a number of complaints regarding the poor conditions of the camps and the harassment at checkpoints and barriers of Tamil civilians wishing to travel to Colombo. Human rights groups were particularly concerned about the situation as it amounted to unlawful detention and restricted the freedom of movements of Sri Lankan citizens (**INFORM**, February 1996, 6).

Since the LTTE suicide bomb attack in Jaffna on 4 July 1996, there has been a large rise in the number of arrests in Jaffna, as well as an institutionalization of torture to a point where Sri Lankans see it as retaliation against Tamil civilians rather than as isolated misdemeanours (**The University Teachers for Human Rights-Jaffna**, August 1996, 28).

According to **The University Teachers for Human Rights-Jaffna**, the Government's public commitment to human rights and the international credit it has received made the latter seem more likely. The consistent failure to issue receipts upon arrest, inform relatives and merely keeping the International Committee of the Red Cross on a casual mailing list, letting them know only of those cases that had at long last been brought to attention of the police, is a sign of almost total loss of accountability in Jaffna. The ease with which persons could go missing is alarming. In practice, there is no one to whom an ordinary person could complain of criminal misdemeanour by the armed forces without living in fear of severe repercussions (**ibid.**).

4.1 Right to physical and mental integrity and not to be subjected to torture

Following the end of the cease-fire in April 1995, 24 corpses, all believed to be Tamil males, were found floating in the Diyawanna Oya and Boldgoda lakes. The victims had been starved and tortured, and in most cases, mutilation and decomposition made identification impossible (**Country Reports for 1995**, 1996). In a marked departure from previous practice, an investigation into these deaths was launched (**Minority Rights Group International**, January 1996). On 17 August 1995, Special Task Force (STF) officers, an army captain and several civilians were arrested and charged with the murders, which police said were committed at the STF headquarters in Colombo (**Country Reports for 1995**, 1996). The Intelligence Wing of the STF was subsequently said to have been disbanded (**Minority Rights Group International**, January 1996). The **Daily News** reported that 22 of the suspects in the Bolgoda

Lake case were granted bail in February 1996 (16 February 1996). The trial against the accused was adjourned in December to March 1997 as none of the accused appeared at the trial (**INFORM**, February 1996).

4.2 Freedom of the press and the right to freedom of opinion and expression

Although the Constitution provides for freedom of speech and expression, restrictions are permitted on national security grounds. In 1995, the commitment of the State to safeguard the freedom of expression and permit free circulation and dissemination of information suffered many setbacks (**NGO Forum**, March 1996, 6). Censorship was imposed between September and December 1995 while State control of key sectors of the press, television and radio broadcasting remained in place (**ibid**).

A number of other Government actions in this respect were also of concern. The Government failed to reform the Press Law as promised during the election campaign and imposed censorship for several extended periods during 1995 on all news items published and transmitted within Sri Lanka regarding the security forces or the police, including the Special Task Force. A "Competent Authority" to whom news items had to be submitted for "approval" before publication was appointed. The Government claimed that the avowed policy of media freedom and transparency had not changed, but the measure was necessary because some newspapers and electronic media had published military-related news in an irresponsible manner, threatening the security of the State and the people (**Reuters**, 2 April 1996). Restrictions on reporting were lifted on 20 December 1995, after the capture of Jaffna (**Canada-Asia Working Group**, January 1996, 23).

With the armed forces denying journalists access to the conflict zones, and with censorship imposed on all local media reporting of military affairs during the main offensive during 1996, it has been impossible to have reliable, independent accounts of the conduct of the armed conflict (**Article 19**, April 1996).

In July 1996, press reports indicated that some 150 telephone lines belonging to over 150 journalists, including those of Agence France Presse, Reuters and six Indian reporters, were being wire-tapped by Sri Lanka's National Intelligence Bureau. Two local newspapers, The Island and Divaina, were threatened that they would be closed down (**Human Rights Watch** 1996, 184). Another incident which called the Government's commitment to press freedom into question was the November 1996 arrest of four Danish journalists, detained under the Emergency Regulations (**U.S. Department of State**, February 1997). According to the Government, their arrest was necessary because of their association with a Tamil girl, who allegedly had ties to the LTTE. They were deported after a brief detention (**ibid.**).

4.3 Freedom of movement with special reference to the internally displaced persons

According to the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Government's military operations have caused thousands of civilians to flee their homes and seek shelter in churches and temples (**E/CN.4/1996/4**, 25 January 1996). Hundreds had been forced to seek refuge in Saint Peter's Church and in Navaly School when both structures were bombed which killed 65 people and injured over 150, including women and children. The bombings affected the following areas: Kokuvil, Thalady, Maruthanamadam, Thavady, Uduvil, Marripay, Anaicotai, Sangarathai, Vaddukoddai and Navaly (**ibid.**).

A disturbing feature of the situation of displaced persons is the ambivalent attitude of the State towards relief agencies and the role that the latter could play in providing assistance, relief and emergency services to the displaced (**NGO Forum on Sri Lanka**, March 1996, 3). Almost half of the internally displaced population resides in "uncleared" areas under the control of the LTTE, where government presence is minimal. International agencies attempt to support the delivery of essential services to the civilian population in these areas but are often subject to logistic and security-related constraints. As a result, the supply of food, clean water, shelter materials and medical services is often inadequate. In the context of the on-going hostilities, the life of the civilian population, including those of the internally displaced persons, in these areas, can only be described as precarious (**INFORM**, January 1997, 6.).

Despite the Government's call on people to return to their homes, there has been some reluctance on the part of the displaced to do so. Security considerations as well as a lack of confidence in the State's

rehabilitation and reconstruction programme have contributed to this reluctance (**INFORM**, February 1997, 4). **The Refugee Policy Group** found that although a number of relief organizations are providing services to displaced persons in the South of Sri Lanka, restrictions on access of these organizations to the North and restrictions on relief items prevent those in the North from receiving the necessary relief (26 March 1996). Thus, the displaced are restricted by one party to the conflict, the Government, from receiving supplies and by the other party, the LTTE, from moving to areas where services and supplies are available, and the conflict between both parties prevents the displaced from returning to their homes (**Ibid.**).

The increased scope and intensity of military operations in Northern Sri Lanka during the latter part of 1996, has led to the renewed displacement of hundreds of thousands of persons (**Sunday Times**, 27 October 1996, 1).

According to the Government, the number of internally displaced persons rose from 512,000 in June 1995 to 770,000 in August 1996. The military offensive on Killinochchi, in August 1996, is estimated to have displaced another 150,000 persons. At the end of October 1996, it was estimated that there were over 700,000 internally displaced persons (**Ministry of Shipping, Ports, Rehabilitation and Reconstruction**, 8 November 1996).

The beginning of February 1997 again saw an exodus of refugees from villages in the path of the armed forces' latest offensive launched against rebel-held territories in the North. Tamil Tiger rebels in the Northwest have warned that another humanitarian crisis is looming as Government forces bomb Tamil border villages near the Vavuniya and Mannar districts (**Reuters** 10 February 1997).

4.4 Internal Flight Alternative

With the continuous hostilities in the Northern and Eastern regions of Sri Lanka, the issue of safe areas or internal flight alternatives for internally displaced Sri Lankans continues to concern governments and international and local human rights and refugee organizations (**UNHCR**, 26 May 1994). According to reports on the human rights situation in the country and the international jurisprudence which has developed, internal flight alternative may be difficult, and in many instances impossible to apply in the context of Sri Lanka, particularly for individual refugees or small families (the category of refugees and asylum seekers most common in the European context) (**The British Refugee Council**, February 1997). Jurisprudence has also established that an internal flight alternative does not exist if one is required to live in a refugee camp (**Goodwin-Gill**, 1996, 74).

Given the recent political debate and discussion in the Netherlands regarding the treatment of asylum applications lodged by citizens originating from Sri Lanka, **UNHCR** emphasizes that the validity of individual asylum claims need to be judged on their own merits, taking into consideration the specific circumstances surrounding each case (19 March 1997). While **UNHCR** appreciates all initiatives to further improve the human rights situation in Sri Lanka, the organisation considers that the security situation in the Northeastern part of the country is still precarious due to the ongoing armed conflict. An asylum seeker coming from Sri Lanka can therefore have a well founded fear of persecution and might be in need of international protection (**Ibid.**).

In a 14 March 1997 decision, a District Court in the Netherlands, the Hague's highest court with authority over refugee matters ruled that owing to the positive human rights situation in Sri Lanka, the application of three Sri Lankan Tamils does not warrant the granting of political asylum in Holland (**Financial Times**, 14 March 1997).

Courts in Canada have held that the relevant criterion is the actual availability of protection in another region, and the chance of maintaining some social and economic existence. In **Rasaratnam v. Canada (Minister of Employment and Immigration)** [1992] 1 FC 706, 710, where the Canadian Federal Court held that for an internal flight alternative to exist, the decision-maker should be satisfied, on a balance of probabilities, that there was no serious possibility of the applicant being persecuted in Colombo, were it such that it would not be unreasonable for the Appellant to seek refuge there (**Ibid.**), and in **Thirunavukkarasu v. Canada (Minister of Employment and Immigration)**, 10 November 1993, (1994) 109 DLR (4th) 682 the Canadian Federal Court of Appeal, held that Colombo was not an internal flight alternative for that particular applicant and he was therefore granted refugee status. The Immigration and Refugee Board found that repeated, continuous and systematic extortion by police in

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