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## **Human Rights and Security Issues concerning Tamils in Sri Lanka**

**Report from Danish Immigration Service's fact-finding mission to Colombo, Sri Lanka.**

***19 June to 3 July 2010***

*Copenhagen, October 2010*

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## Overview of fact finding reports published in 2009 and 2010

Cooperation with the National Agency for the Prohibition of Traffic in Persons and other related matters (NAPTIP). Report from Danish Immigration Service's fact-finding mission to Abuja, **Nigeria**. 14 to 24 February 2009  
2009: 1

Security and Human Rights Issues in Kurdistan Region of **Iraq (KRI)**, and South/Central Iraq (S/C Iraq), Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009  
2009: 2

Honour Crimes against Men in Kurdistan Region of **Iraq (KRI)** and the Availability of Protection, Report from Danish Immigration Service's fact-finding mission to Erbil, Sulemaniyah and Dahuk, KRI, 6 to 20 January 2010  
2010: 1

Entry Procedures and Residence in Kurdistan Region of **Iraq (KRI)** for Iraqi Nationals, Report from Danish Immigration Service's fact-finding mission to Erbil, Sulemaniyah, Dahuk, KRI and Amman, Jordan, 6 to 20 January and 25 February to 15 March 2010  
2010: 2

Human rights issues concerning **Kurds in Syria**, Report of a joint fact finding mission by the Danish Immigration Service (DIS) and ACCORD/Austrian Red Cross to Damascus, Syria, Beirut, Lebanon, and Erbil and Dohuk, Kurdistan Region of Iraq (KRI), 21 January to 8 February 2010  
2010: 3

Allegations against the National Agency for the Prohibition of Traffic in Persons (NAPTIP) and warnings against return to **Nigeria**, Report from Danish Immigration Service's fact-finding mission to Abuja, Nigeria, 9 to 17 June 2010  
2010: 4

Security and Human Rights in **South/Central Iraq**, Report from Danish Immigration Service's fact-finding mission to Amman, Jordan and Baghdad, Iraq, 25 February to 9 March and 6 to 16 April 2010  
2010: 5

Human Rights and Security Issues concerning Tamils in **Sri Lanka**, Report from Danish Immigration Service's fact-finding mission to Colombo, Sri Lanka, 19 June to 3 July 2010  
2010: 6

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## Abbreviations

|        |                                                                                                                                                                                                                                                        |
|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CGR    | Commissioner General of Rehabilitation                                                                                                                                                                                                                 |
| CID    | Criminal Investigation Department                                                                                                                                                                                                                      |
| DIE    | Department of Immigration and Emigration                                                                                                                                                                                                               |
| DRP    | Department of Registration of Persons                                                                                                                                                                                                                  |
| GSP+   | Generalised System of Preferences Plus (System through which the European Union extends preferential access to its markets to developing countries; eligibility is determined based on compliance with international human rights treaty obligations). |
| ETD    | Emergency Travel Document                                                                                                                                                                                                                              |
| ER     | Emergency Regulation                                                                                                                                                                                                                                   |
| EPDP   | Eelam People's Democratic Party                                                                                                                                                                                                                        |
| HRC    | Human Rights Commission                                                                                                                                                                                                                                |
| ICRC   | International Committee of the Red Cross                                                                                                                                                                                                               |
| IDP    | Internally Displaced People                                                                                                                                                                                                                            |
| IOM    | International Organisation for Migration                                                                                                                                                                                                               |
| INGO   | International non-governmental organisation                                                                                                                                                                                                            |
| LTTE   | Liberation Tigers of Tamil Eelam                                                                                                                                                                                                                       |
| NIB    | National Intelligence Bureau                                                                                                                                                                                                                           |
| NIC    | National identity card                                                                                                                                                                                                                                 |
| NGO    | Non-governmental organisation                                                                                                                                                                                                                          |
| PLOTE  | People's Liberation Organisation of Tamil Eelam                                                                                                                                                                                                        |
| PTA    | Prevention of Terrorism Act                                                                                                                                                                                                                            |
| SIS    | State Intelligence Service                                                                                                                                                                                                                             |
| TELO   | Tamil Eelam Liberation Organisation                                                                                                                                                                                                                    |
| TID    | Terrorist Investigation Department                                                                                                                                                                                                                     |
| TMVP   | Tamileela Makkal Viduthalai Pulikal (Tamil People's Liberation Party)                                                                                                                                                                                  |
| UNHCR  | United Nations High Commissioner for Refugees                                                                                                                                                                                                          |
| UNICEF | United Nations Children's Fund                                                                                                                                                                                                                         |
| UNOCHA | United Nations Office for the Coordination of Humanitarian Affairs                                                                                                                                                                                     |

## Introduction and methodology

This fact finding report has been produced by the Documentation and Project Division, Danish Immigration Service (DIS) for use by officials involved in the asylum determination process. The information included in the report was gathered during a fact finding mission to Colombo, Sri Lanka between 19 June and 3 July 2010.

The mission was undertaken in order to investigate the human rights and security situation for Tamils in Sri Lanka. The timing of the mission was primarily due to the fact that limited information related to the situation for Tamils came out of the country after decades of conflict were brought to an end in May 2009 when the government forces defeated the Liberation Tigers of Tamil Eelam (LTTE).

Another reason for conducting the mission more than a year after the end of the conflict was the fact that the visas for the mission were issued 10 months after the application was submitted. The delegation originally wished to visit Colombo, the Northern and the Eastern provinces, however, it was only possible to stay in Colombo. The delegation was advised that the issuing time for a visa could take even longer time if a permission to travel to the North and East was applied for.

The terms of reference for the mission were created by DIS and include comments from the Danish Refugee Appeals Board as well as other partners. The Terms of Reference is included as Annex 1.

In the scope of compiling this report, the delegation consulted a range of sources in Colombo consisting of Sri Lankan authorities, diplomatic missions, international organisations, local NGOs and media people. The sources were contacts established prior to departure as well as sources suggested by relevant international and national partners working with country of origin information (COI).

Before each meeting, all sources were briefed that the information they provided would be for public use in accordance with Danish legislation. The interviews were recorded in handwritten form. Each source was given ample time to correct his or her own statements in the records written by the delegation. All sources but one agreed to review the record of their respective meeting. In the meantime, one of the sources retired from his duty and the notes could not be approved and two sources did not give their approval of the wording of the records forwarded.

Each source was asked for permission to be quoted by name. Some sources abstained from this request because they had concerns for both their own security and (possibly) the security of those they were assisting. This is reflected in the fact that in order to gain access to work in the newly resettled areas in the North, IDP camps, and camps for alleged LTTE associates, permission can only be granted by the Presidential Task Force. However, in some cases the Task Force had withdrawn permission and in other cases visas were not issued to international aid workers or they were even expelled from the country. Most sources agreed to be quoted by name, however, some sources wished to remain partly anonymous with e.g. only profession or type of organisation being published and one source wished to remain totally anonymous. (Reference is made to Organisations, authorities and persons consulted).



The situation for people with a certain profile and affiliation to LTTE is still unclear. Various sources indicated that between 6,000 and 9,000 alleged former LTTE associates were still held in closed camps.

In addition, it should be noted that the sources use different terms to refer to the camps (such as rehabilitation centres /surrendee camps/detention camps/closed camps) for the alleged LTTE associates. Likewise, the sources used different terms to refer to the alleged LTTE associates in the camps (such as detainees/surrendeeds). In this report the terms used are the ones used by the individual interlocutor.

It should also be noted that most sources focused on the situation in the North where the biggest changes had taken place as a consequence of the end of the conflict. This is also reflected in the report in the sense that more information is provided on the situation in the North than on the situation in the East.

This report is not a detailed or comprehensive survey of all issues concerning the Tamils in Sri Lanka. The information provided in this report is the information of most direct relevance to typical asylum claims made in Denmark.

In the report, care is taken to present the views of the various interlocutors as accurately and transparently as possible. It is inevitable that this report will contain some seemingly contradictory statements. However, it should be noted that the report has been produced to accurately reflect, as far as possible, the information communicated to the delegation in the various meetings and does not contain any opinions or policies held by DIS.

The delegation would like to express its gratitude for the assistance and extensive support provided by the Royal Danish Embassy in New Delhi, India during its preparations for the visit to Sri Lanka and by the Royal Danish Consulate General in Colombo during the mission.

The mission delegation and editorial team comprised Chief Adviser Else Øllgaard and Regional Adviser Rikke Blaaberg Jensen, the Danish Immigration Service.

### **Major developments in the situation in Sri Lanka after the end of the armed conflict**

On 19 May 2009, the Government of Sri Lanka formally declared victory over the Liberation Tigers of Tamil Eelam (LTTE) after capturing the last LTTE-controlled territories in the north of the country. This marked the end of a 26-year non-international armed conflict.<sup>1</sup> The immediate origins of the conflict lie in attempts in 1956 by a Sinhalese dominated government to reverse what was seen as the excessive influence of Tamils during the colonial era. Over the years, the failure of Tamil political parties to attain their aims by peaceful means had led to demands for an independent Tamil state to be known as Eelam – corresponding to the country's Northern and Eastern provinces, and to the formation of armed groups dedicated to achieving this goal.

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<sup>1</sup> UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, UNHCR 5 July 2010 (p. 1).  
<http://www.unhcr.org/refworld/pdfid/4c31a5b82.pdf>

A ceasefire agreement between the parties was negotiated by Norway in 2002. However, as of summer 2006 fighting intensified. The ceasefire was formally repealed by the government in 2008. Crucial military successes against the LTTE were gained during 2008 and up to 19 May 2009.<sup>2</sup>

The end of the conflict resulted in nearly 300,000 internally displaced persons (IDPs) and allegations of potential violations of international humanitarian law and other alleged crimes perpetrated by both sides in the final stages of the conflict. The IDPs were initially detained in camps, primarily in the Vavuniya area. Since December 2009 IDPs have been permitted some freedom of movement, and many IDPs have since returned to their home districts. By mid-June 2010, approximately 246,000 people had left the displacement camps to return to their places of origin or live with host families, relatives and friends.<sup>3</sup> In the wake of the conflict, almost 11,000 individuals suspected of LTTE links were arrested and detained in high-security camps.<sup>4</sup>

### Political developments

Significant political developments have taken place in Sri Lanka during the first half of 2010 including the polls in January to elect a new president, and in April to elect the first Parliament of the post-conflict era.

On 26 January 2010, Mahinda Rajapaksa was re-elected president of Sri Lanka with a majority of 58% of the votes while the opposition candidate the former army commander General Sarath Fonseka gained 40% of the votes.<sup>5</sup> On 8 February, General Fonseka was arrested and taken into custody. At the Parliamentary elections in April 2010 Rajapaksa and his UPFA (United People's Freedom Alliance) coalition gained 144 out of 225 seats in the Parliament.<sup>6</sup>

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<sup>2</sup> Ministry of Foreign Affairs, *Landefakta Sri Lanka*, updated on 13 July 2010 (translated from Danish) <http://www.um.dk/da/menu/Udenrigspolitik/Landefakta/LandefaktaAsien/SriLanka.htm>

<sup>3</sup> UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, UNHCR 5 July 2010.

<sup>4</sup> Ibid.

<sup>5</sup> Ministry of Foreign Affairs, *Landefakta Sri Lanka*, updated on 13 July 2010 (translated from Danish) <http://www.um.dk/da/menu/Udenrigspolitik/Landefakta/LandefaktaAsien/SriLanka.htm>

<sup>6</sup> Ibid.

## **I Situation for Tamils in the North**

### **I. 1 Security**

A leading human rights defender in Sri Lanka outlined the overall security situation in Sri Lanka underlining that the level of constant security measures had gone. However, the government has declared that there will be a permanent presence of security forces in North and East. According to the source, ethnicity of Tamils still present a vulnerable group in terms of target for the implementation of the security measures although a considerable decrease in checks have taken place.

#### ***I. 1. 1 Cessation of the hostilities and role of remaining scattered groups of LTTE***

Answering to the question on the role of possibly remaining groups of LTTE, UNHCR commented that the LTTE does not currently appear to be a significant problem, and there are no known activities of the organisation at present. In this connection UNHCR explained that the North and in particular the areas of return are heavily militarised. There had been no incidents of LTTE identified factions reported during the past months.

The EU-delegation as well as the spokesperson from the British High Commission stated that there are no reports on remaining groups of LTTE in the North after the war, and no evidence to prove existence of LTTE groups.

A diplomatic mission commented that the real hardcore and high profile LTTE members seem to have left the country and there are reports that they have bribed their way out of the IDP camps. The highest ranking were either captured or killed at the end of the war.

Regarding possible reminiscences of the LTTE, the Norwegian Embassy commented that there are no organised or visible signs of the LTTE, and the organisation no longer poses a threat in terms of organised activities of taking up arms, but the embassy also mentioned that people's "hearts and minds" may be different.

When asked if there are any remaining groups left of the LTTE, the Executive Director of the National Peace Council answered that this was not the case. Many were killed and everyone who was suspected of being linked with the LTTE was put in rehabilitation and detention camps.

An anonymous source informed the delegation that in the North there are definitely reminiscences of the LTTE cadres left, but that it is difficult to distinguish between the LTTE- members and the lower level supporters. The source said that some of the hard core cadres probably managed to get out of the IDP camps and leave the country, and that others were killed. The source assessed that presently there are no hard core cadres left inside the Vanni.

#### ***I. 1. 2 Situation for people who were previously in conflict with LTTE***

Regarding the situation for people who were previously in conflict with the LTTE, the spokesperson from the British High Commission indicated that based on information available there was no LTTE left to threaten these people.

The Norwegian Embassy found that people who were previously in conflict with the LTTE would not have a problem of returning today.

The Director of the anonymous local NGO also stated that a returnee from abroad who formerly had a conflict with the LTTE could safely return to the North. The same source informed the delegation that Tamils from abroad are coming to Jaffna to set-up businesses, but most of them do not want to settle due to the unclear security situation.

***I. 1. 3 Situation for LTTE members, LTTE ex-fighters, LTTE supporters, and family members to Tamils who have been affiliated with LTTE***

According to UNHCR it is too early to say how the situation will develop in the future at local level for people who were members, ex-fighters and supporters of LTTE – or had family members who were – due to the unclear situation of persons suspected of being affiliated with the LTTE who are currently held in rehabilitation camps.<sup>7</sup>

Similarly, the spokesperson from the British High Commission said it is still unclear which situation people with a certain profile (members, ex-fighters, supporters, family members or previous affiliated with the LTTE) would be in today. In this context, the spokesperson mentioned that out of the 300,000 IDPs, approximately 12,000 detainees with suspected LTTE links had been screened out to rehabilitation camps in the North. They are at present detained without legal framework. The spokesperson further mentioned that children with LTTE links were released.

When asked if former LTTE members in the North could return without facing difficulties, the Director of the anonymous local NGO found that LTTE members would be at risk in the sense that EPDP would constitute a threat to them.

*Reference is made to para I. 2. 1 and I. 2. 1. 1 for more information on former LTTE members and supporters and child soldiers.*

***I. 1. 4 Situation for returnees from abroad***

UNHCR did not consider a refugee returnee from abroad to be at particular risk in areas of return or in a distinct situation compared to returned IDP's. They would be faced with the same problems relating to lack of infrastructure and other basic needs in areas of return according to UNHCR. UNHCR emphasized that the main concern of IDPs returning to their homes in the North is return to normalcy and that they are focused on rebuilding their shelters and re-establishing their livelihoods. Concerns had been expressed by many observers that although there has been a military victory, there had not yet been a vocal commitment to reconciliation. In addition, there is a significant presence of Sri Lankan military throughout the North at the moment.

Similarly, the Co-ordinator of Law and Society Trust mentioned that no specific conflicts related to returnees in the North had been reported to him. In this connection the Co-ordinator mentioned that land issues are probably the most important issue for returnees.

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<sup>7</sup> In a later correspondence (dated 3 August 2010) on detailed profiles at risk, UNHCR referred to “the Eligibility Guidelines which speak to this in current terms”, UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 July 2010, *Persons Suspected of Having Links with the Liberation Tigers of Tamil Eelam (LTTE)*, p. 3-5  
<http://www.unhcr.org/refworld/pdfid/4c31a5b82.pdf>

According to the spokesperson from the British High Commission there is no information on any incidents involving returnees in the North. The spokesperson added that returnees from UK receive post-arrival assistance and are monitored by IOM.

The Norwegian Embassy did not have any examples of people who had returned from Norway to the North/ Jaffna recently, but mentioned that many people from Jaffna who are now Norwegian citizens travel on frequent basis to the North.

A diplomatic mission commented that there had been voluntary returns from abroad to the North; no incidents have been reported so far.

The Executive Director of the National Peace Council had not heard about Tamils who experienced reprisals in connection with their return to the North from abroad, regardless if they were LTTE members or not. The Executive Director of the National Peace Council further commented that no Tamils would like to return as the Sri Lankan army is still strong and the Sinhalese are ruling in Colombo. Tamils do not see much hope of improving the situation in the North and East. Sinhalese people are moving to the North and East while the Tamils are leaving the country.

The anonymous source similarly commented that there was no big influx of Tamil returnees after the war ended. On the contrary, people wish to leave the country. The anonymous source further commented that returnees from abroad would probably undergo scrutiny, but the source did not have any specific information related to any cases.

In line with the above source, the Director of an anonymous local NGO said that people who fled the country are generally not coming back which would not be conducive in the opinion of the Director since there are still thousands of LTTE suspects in jail, and minority groups still live in fear.

Answering to the question on the situation for returnees from abroad, an official attached to a human rights organisation informed the delegation that returnees from abroad, who were in conflict with the LTTE, will not be at risk as opposed to supporters of the LTTE, who are likely to be at risk if they come back. The official added that this was built on assumptions since there was no recent information on returnees from abroad.

### ***1. 1. 5 Situation in Jaffna***

The Norwegian Embassy informed the delegation that the security in Jaffna has improved a lot. There are now only few incidents of violations. However, in April 2010 there had been cases of abductions and killings which could be related to the aftermath of the general elections. The Norwegian Embassy explained that it is unknown who is committing these crimes, but people in Jaffna are referring to paramilitary groups with an affiliation to EPDP. The source further informed the delegation that the killings reported in Jaffna in April 2010, included two young girls who were raped and killed in Mannar, and the killing of a young boy who was the son a businessman and who had been abducted for ransom and later killed.

The Norwegian Embassy further informed the delegation that up to April 2010, the military presence in Jaffna had been reduced, while police forces and the civil administration were taking over, but after the incidents the military is back and very visible in almost every road. There are no restrictions on movement, but a few checkpoints, especially close to the military camps and the high security zones, and checks are carried out, especially at night time.

The spokesperson from the British High Commission commented that a year ago the situation in Jaffna had been more relaxed, but tensions have increased over the past year. There had been an increasing number of crimes in the last year after the curfew was lifted. The police do not seem to have the capacity to deal with these crimes.

The Executive Director of the National Peace Council stated that during the period from May 2009 to May 2010 the situation improved in Jaffna. However, the situation seems to be deteriorating since April 2010 in the sense that killings and kidnappings have started again. This has been seen as more in the nature of criminal activities rather than politically motivated and has not been consistent. The Executive Director explained that although no more political killings take place in Jaffna, politically active persons still feel vulnerable.

As regards the situation in Jaffna, the Executive Director of the National Peace Council informed the delegation that the community is intact. There is a huge army with the potential for abusing their powers as there is no effective system of checks and balances, such as independent monitoring. Random checks are being carried out on people's cars and especially young people are targeted.

An official attached to a human rights organisation similarly informed the delegation that in the period prior to the presidential (January 2010) and parliamentary (April 2010) elections, the security situation was relieved in Jaffna. However, after the elections the security level returned to the level as it was immediately after the war, including a heavy presence of the army. The authorities explained the high security apparatus by a high crime rate. However, the official pointed out that in a post war situation it ought to be the police that ensured law and order rather than the army.

According to the Co-ordinator of Law and Society Trust, the fear of abductions and killings has reduced and the situation compared to the previous years 2006-2008 where far more people were killed and abducted has improved a lot. The general fear has gone which is also expressed by the fact that more people are now out in the night than in the period 2006-2009. The Co-ordinator of Law and Society Trust informed the delegation that there are still cordon and search operations in Jaffna. It is however an improvement that the police as a civil authority are now participating together with the army in these operations. According to the Co-ordinator of Law and Society Trust, the regularity of checks at checkpoints in Jaffna is not systematic and only occasionally people will be stopped. People are rarely taken into custody after checks. However, those who had been in the LTTE in the past and had left and now leading civilian lives, could be exposed to checks as well as those who are suspected of having sympathies and connections with the LTTE, including families of LTTE members.



**I. 1. 6 The role of the pro-government paramilitary groups  
(EPDP<sup>8</sup>, PLOTE<sup>9</sup>, TELO<sup>10</sup>, EPRLF<sup>11</sup>)**

Answering to the question of the role of para-military groups in the North, UNHCR replied that to a certain degree there is an amount of fear among the population, but that it is difficult to assess if the fear is based on rumour or actual fact. There are reports that some of the groups continue commercial extortion activities.<sup>12</sup>

The Norwegian Embassy explained that paramilitary groups in Jaffna in the period from 2006- 2008 split into many different groups, and that it was difficult to name them or to affiliate them with a particular party. Some of these groups joined the government under the Sri Lankan intelligence service and some remained separate. The groups were carrying weapons, and were perceived as the prolonged arm of the police and the government by the local people. Previously (2007-2008), these groups carried out political motivated abductions, so called “white vans abductions”, targeting people who had been in touch with the LTTE, including family members, and it was believed that the groups to some extent were affiliated with the government. Abductions now take place at a very reduced scale. Today there are groups targeting local business people, but it is unknown which groups are behind.

A diplomatic mission informed the delegation that the crime rate in Jaffna was high in April 2010, but has since decreased. Crimes included also sexual assault. It is assumed that para-military groups are behind these crimes, and there are rumours that the groups have some backing from the security forces. Asked about the risk that paramilitary groups will be to civilians, a diplomatic mission replied that there are reports that EPDP groups are still involved in extortion activities in the North. The target for these groups could be anybody who has got money. Recent violations have included sexual assaults. Among vulnerable groups the diplomatic mission mentioned single women and that

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<sup>8</sup> Eelam People's Democratic Party (EPDP): Led by Douglas Devananda, the Eelam People's Democratic Party (EPDP) broke away from the Eelam People's Revolutionary Liberation Front (EPRLF) in approximately 1988. Since 1990 it has fought alongside the Sri Lankan Army against the Liberation Tigers of Tamil Eelam (LTTE). Since 1994, the EPDP has been the most significant force in electoral politics in Jaffna, although voter turnout has been exceptionally low. The EPDP has generally been supportive of People's Alliance/UPFA government policy on the war and peace process. Although EPDP armed cadres may only be a few hundred strong, they retain a reputation for human rights abuses. Source: Country of Origin Information Report, Sri Lanka, 18 February 2010, UK Border Agency, Country of Origin Information Service.

EPDP has currently three Members of Parliament. At the 2010 parliamentary election in Sri Lanka the party won 0.04% of the votes. [http://www.slelections.gov.lk/parliamentary\\_elections/AIVOT.html](http://www.slelections.gov.lk/parliamentary_elections/AIVOT.html)

<sup>9</sup> People's Liberation Organisation of Tamil Eelam (PLOTE): Formed in 1979 as a split from the LTTE. It was never well armed and its military activities remained low key. In time, internal feuds and a souring of relations with its Indian sponsors fuelled the PLOTE's slow demise and the group was largely wiped out by the LTTE in 1986. After the [1987] Indo-Lanka Accord, the PLOTE renounced its armed rebellion against the Sri Lankan government, but maintains armed cadres to this day. Source: Country of Origin Information Report, Sri Lanka, 18 February 2010, UK Border Agency, Country of Origin Information Service

<sup>10</sup> Tamil Eelam Liberation Organisation. TELO has currently two Members of Parliament. It is part of the Tamil National Alliance (TNA), a coalition of parties which won 2.9% of the popular vote and 14 out of 225 seats at the 2010 parliamentary election in Sri Lanka.

[http://www.slelections.gov.lk/parliamentary\\_elections/AIVOT.html](http://www.slelections.gov.lk/parliamentary_elections/AIVOT.html)

<sup>11</sup> Eelam People's Revolutionary Liberation Front (EPRLF): The EPRLF now functions as two groups – the Suresh wing (on the Tamil National Alliance (TNA) list) and the Varatharaja wing. Source: Country of Origin Information Report, Sri Lanka, 18 February 2010, UK Border Agency, Country of Origin Information Service

<sup>12</sup> In a correspondence (dated 3 August 2010) regarding approved notes, UNHCR referred to the Eligibility Guidelines for more information on para-military groups, UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 July 2010, (p. 8).

a returnee from abroad could be a suspect of having money, but the source did not have information about any incidents.

Regarding the role of the paramilitary groups in the North, the spokesperson from the British High Commission mentioned that EPDP was very evident in Jaffna. Especially in the run up to the elections in April 2010, there had been several abductions. Regarding other paramilitary groups the spokesperson from the British High Commission mentioned that there has not been information on PLOTE or other groups, lately.

An anonymous source informed the delegation that the para-military groups PLOTE, TELO and EPDP are functioning in the North with the consent of the government. Their role is to keep Tamils “on the track”. At the moment there are no para-military groups operating in the Vanni, but the source found that they will be ready to go in as soon as it becomes possible. In Vavuniya the groups have their official offices. According to the source, they used to do the “dirty job for the government” in the sense that they were assisting in identifying former LTTE members. The groups are now engaged in criminal activities, including kidnappings and abductions for ransom. Moreover, the paramilitary groups are forcefully recruiting young people.

A diplomatic mission commented that in the Vanni in the return areas there is a concern that the political vacuum left could be filled with para-military groups and, as a consequence, that forced recruitment and extortion may increase if elections are held in the North.

The Director of an anonymous local NGO informed the delegation that the paramilitary groups are backing for the army and the police who are enjoying impunity. The paramilitary group EPDP is behind kidnappings and extortion. PLOTE is no longer as powerful in the North as they used to be, but EPDP is powerful also in Vavuniya.

A leading human rights defender in Sri Lanka informed the delegation that EPDP is the only paramilitary group operating in Jaffna but that their activities have been reduced after the security situation greatly improved in the aftermath of the elections. There is no information on forcibly conscript by the group. During the election campaign the group had targeted political opponents and people associated with other political parties. After the election, criminal activities allegedly performed by people affiliated with EPDP, including robberies, abductions and extortion activities have risen.

The Co-ordinator of Law and Society Trust said that paramilitary groups such as EPDP are operating in the North with a criminal mindset in the sense that their aim is to get money or personal revenge; primarily on those who had connections and had sympathies with LTTE.

The Co-ordinator of Law and Society Trust further said that local people will identify someone who is affiliated with EPDP to be behind crimes. These crimes are often committed by people who are not formally a member of the organisation. Some of the activities do not have a political dimension, and the people targeted for these crimes are affluent people like businessmen and traders. For example a business man was killed in 2010.

The Executive Director of the National Peace Council said that kidnappings for ransom targeting children whose parents are affluent take place. When asked who is behind the killings and kidnappings, the Executive Director of National Peace Council replied that it is armed Tamil groups



and many social workers in Jaffna allege that it could be the EPDP even though their leader is denying it.

An official attached to a human rights organisation informed the delegation that the paramilitary groups have had two wings, a political and an armed wing. At the parliamentary election EPDP won three seats in the North. After the war has come to an end, the government no longer needs the paramilitary groups, as their main task was to identify LTTE members and affiliates. It is now difficult for the paramilitary groups to find their role and some of them may engage in crimes. However, it is not clear whether these groups are behind the increase in criminal activities in Jaffna, but it is alleged that EPDP in Jaffna recently threatened an independently working Magistrate, who detained members of one of the paramilitary groups in connection with an abduction case. The Magistrate was transferred to a position elsewhere in the country (reference is made to the following paragraph).

### ***I. 1. 7 Protection against para-military groups***

As regards possibilities for seeking protection, the Executive Director of the National Peace Council said that the police (Sinhalese) are in place although they will not be able to ensure justice. Courts are functioning in the North, however, magistrates who worked independently have been transferred to positions elsewhere in the country.

The Co-ordinator of Law and Society Trust mentioned the recent case in which EPDP had been involved in abduction and killing of a boy in Jaffna. Following the arrest of a person involved, the EPDP had threatened the Magistrate which had caused a strike among the lawyers of the Bar Association in Jaffna. In June 2010, the case was still pending at the court in Jaffna, but the Magistrate has been transferred to another position elsewhere in the country.

A leading human rights defender in Sri Lanka similarly referred to the recent abduction case in Jaffna, involving EPDP where the Magistrate who detained a person with links to an allegedly EPDP paramilitary group received death threats. The Bar Association in Jaffna went on strike but the Magistrate was later transferred to another position in the country. The leading human rights defender found that on one hand the case showed that people can still challenge the authorities, but on the other hand the resulting transfer of the Magistrate does not encourage the trust in the Courts/the judiciary. According to the source, the security of the people is still fragile and the country is not yet in a post conflict situation since the emergency laws are still in force and there is a high presence of the army.

When asked if it would be possible to seek protection in the North, an official attached to a human rights organization said that it would not be efficient to seek protection from the police. Although in most police stations at least one person speaks Tamil, it may take 3-4 days before the officer will be available on duty and therefore it may take 3-4 days to file a case. As regards the Human Rights Commission, the official informed the delegation that the commission is defunct and also ICRC no longer has access to all areas in the North and East. With regard to the possibility for seeking protection from the paramilitary groups in Jaffna, the Director of the anonymous local NGO said that the police would not take action if incidents were reported to them. The Director also mentioned the case related to EPDP abduction and extortion in which the mayor of Jaffna (EPDP member) had threatened an independent Magistrate who later was transferred to another position in the country. Another magistrate in Vavuniya was also transferred in connection with a case

involving paramilitary groups. The case in Jaffna is still pending; however, after the transfer of the Magistrate it is uncertain how the authorities will deal with this case.

According to Ms. Kishali Pinto-Jayawardene, who is a human rights lawyer and works as a senior consultant at the Law & Society Trust, there are several cases related to abductions and demand for ransom by the para-military groups in the North. The ability of the court system to deal with these cases is limited which Ms. Kishali Pinto-Jayawardene explained by referring to the same abduction case (2010) in which EPDP affiliated people had been allegedly responsible and where the Magistrate had taken strong steps resulting in his transfer to another position elsewhere in the country.

The Co-ordinator of Law and Society Trust mentioned the fact that EPDP is playing a double role in the North. On the one hand EPDP is affiliated with paramilitary groups and on the other hand EPDP is assisting people in their daily lives. The Co-ordinator further explained that due to the fact that civil structures are not in place, people in the North will seek help from EPDP's office. The support they are asking for is for instance help finding a family member, paying the school fee for a child or paying for livelihood equipment such as fishing equipment. The impression EPDP is giving is that they are helping people out. In return they are asking for support to the party. According to the Co-ordinator of Law and Society Trust it is a general feature of local politicians in Sri Lanka that party leaders in person are providing assistance to the local people, which is an essential part of their political survival.

The Director of an anonymous local NGO assisting people to resettle and re-establish their livelihood informed the delegation that when equipment and seeds are distributed by the NGO's to the returnees it will always take place in front of government Members of Parliament and army personnel who will expose themselves with the donors.

*Reference is made to chapter VI for more information on general protection and legal safeguards.*

## **I. 2 Human Rights Situation**

### **I. 2. 1 Rehabilitation of former LTTE-cadres**

ICRC informed the delegation that at the last stage of the war 10,000 – 11,000 persons suspected of being linked to the LTTE were arrested and placed in "rehabilitation camps". Until July 2009, ICRC had unhindered access to the camps, but after July 2009, ICRC has had no access to most of these camps. ICRC informed the delegation that there is still no clear legal basis for their detention. Some have been released or transferred, but 8,000-9,000 remain in the camps, according to the authorities. Asked about the profile of the held persons, ICRC commented that they are named in different ways such as "surrendees" or "ex-combatants". The screening process of the held persons is still ongoing. ICRC added that the majority of suspected "hard core" LTTE members are placed in police detention centers.

Deputy Solicitor General Shavinda Fernando stated that the investigations as regards LTTE suspects who were screened out and detained at the end of the conflict, is ongoing. Answering to the question on which procedure these cases will undergo, the Deputy Solicitor General replied that if there is evidence to press charges against some of the detainees in the rehabilitation camps the court files will be presented to the Attorney Generals Department. The cases will be dealt with

under the ER or PTA or under normal law. Deputy Solicitor General stated that the number of LTTE suspects with indictments could not be informed at present.

Regarding the future of the detainees in the rehabilitation camps, the Deputy Solicitor General Shavinda Fernando informed the delegation that his office is cooperating with the Director General of Rehabilitation in order to provide legal advice for ongoing investigations in the camps. The Attorney General's Department will review the notes of interviews from the camps and decide on which cases should be prosecuted.

Asked about which degree of involvement would lead to a criminal case, Deputy Solicitor General Shavinda Fernando stated that it will depend on the individual case. As an example, the Deputy Solicitor General mentioned that gathering information for the LTTE could lead to a murder and thus be a serious case. It will be taken into consideration that LTTE recruited forcefully and if there is no evidence against the individual, rehabilitation of the detainees will be considered. Asked for further details on which degree of involvement would lead to prosecution, the Deputy Solicitor General stated that for the time being it was not possible to give further information.

Deputy Solicitor General Shavinda Fernando further stated that at the moment there is no political or legal mechanism for surrendees to be granted amnesty. In this connection the Deputy Solicitor General emphasized that the crucial point would be whether the individual was involved with LTTE activities. There is no difference between suspects being arrested and suspects who surrendered, with regard to the legal procedure.

UNHCR informed the delegation that no independent information is available on the situation of the alleged LTTE cadres in the rehabilitation camps since the ICRC was denied access in July 2009. There is no legal framework for their detention and no clarity on the rehabilitation process. There have been releases from the rehabilitation centres before the elections in April and the anniversary of the victory in May 2010, as well as other releases on an ad hoc basis. The detainees/surrendees have been released to their family members, and the releases have had a very high profile in the media. Media reports that a total close to 3,000 have been released. Once released, UNHCR monitors these persons as with other types of returnees in the return areas and so far there have not been any systematic concerns for this group differing from the concerns of other returnees. UNHCR emphasized that it is very early to say how things will develop. In the media, there are indications from the government that approximately 1,300 will be charged formally and undergo prosecution. UNHCR informed the delegation that according to Sri Lankan law, the surrendees could receive a sentence of 5-15 years but it remains to be seen how the government will address this.

IOM similarly explained that the rehabilitation of the cadres is the responsibility of the Commissioner General of Rehabilitation (CGR). IOM informed the delegation that out of a total of 11,500 identified as former LTTE-cadres 506 were children associated with fighting groups. UNICEF had a special programme for the children who are now all released and back with their families (reference is made to chapter I. 2. 1. 1 Rehabilitation of child soldiers). IOM further said that the organisation has access to the LTTE rehabilitation camps, as the organisation is involved in the socio-economic profiling of the ex LTTE combatants in connection with programmes for re-integration into the society. The socio-economic profiling includes information on age, skills and employment aspirations.

IOM further commented that women and men are staying in different camps, but family members have access to visits. CGR staff in the centres speaks Tamil and IOM found that the relations between staff and detainees were good. From January to April 2010 approximately 2,500 ex-LTTE cadres had been released from the rehabilitation centres and brought back to their communities according to IOM. Before the release, some of them have undergone vocational training programmes offered by NGOs or government institutions, or private sector outside the rehabilitation centres to prepare them for re-integration. Training programmes include training in hair dressing, tailoring, welding, plumbing, driving and carpentry. According to IOM, generally trainings take place outside the centres and the former combatants are allowed to leave the centres and come back.

IOM explained that the government has identified less than 2,000 who will be prosecuted. A group of approximately 6,000 are identified as medium risk that will undergo a rehabilitation programme scheduled not to exceed 12 months. This was the plan announced by the CGR in March 2010. Currently, the CGR informed IOM that there will be monthly releases of (small) groups and this is happening. IOM said that 1,400 disabled ex-LTTE combatants were released in April 2010. A month ago (May 2010) 70 drivers had been released and were now employed by a bus company in Jaffna, and a further 200 university students had been released and were back at the university in Jaffna.

Several sources (including a diplomatic mission, the Norwegian Embassy, an anonymous source, a leading human rights defender and the Director of an anonymous local NGO) mentioned the lack of information on the legal status of the people held in the “rehabilitation” camps. The sources further commented the lack of information with regard to charges and profile of the approximately 1,300 people who, according to the government, will be prosecuted.

A diplomatic mission informed the delegation that many of the ex-combatants in the closed camps in the North might have been forcefully recruited in the latest stages of the war and that many previous supporters also stay there. They are deprived of basic procedural safeguards and are effectively held in arbitrary detention since the end of the war. Neither the ICRC nor the Human Rights Commission has access to them. As regards the rehabilitation program for LTTE cadres, the diplomatic mission said that the Government has not presented a coherent program to the public and that there is no clear legislative framework. Meanwhile, it is evident that the rehabilitation process is primarily controlled by the Ministry of Defence. The diplomatic source further said that some 2,500 of an initial 11,000 have been released, including over 1,000 disabled persons, but the criteria for their release are not clear and the released cadres are under certain surveillance in their return areas.

The diplomatic mission further commented that out of the 8-9,000 still held, the government has announced that 1,300 hard core LTTE cadres will be prosecuted, and for the remaining 6,000 it is not clear for how long they will be detained – may be 6 months up to 2 years. The diplomatic mission further commented that the surveillance of the released LTTE-cadres may go on continuously; there are credible reports that some of the released alleged LTTE-cadres are trying to leave the country.

The anonymous source explained that out of the 300,000 IDP's, 11,000 people with some sort of affiliation to the LTTE had been screened out for detention in the rehabilitation camps. The profile of their engagement with the LTTE is unknown as there is no access to the detainees by any

organisation, including ICRC which since July 2009 have been denied access. The source commented that the government has informed that 1,350 of the detainees are hard core cadres who will be prosecuted. The source continued that these people at present do not have access to legal council, and it is also uncertain which charges they will face as the government has not provided any information on their status.

The anonymous source said that in connection with the screening process, the military had been in the IDP camps to question people about their involvement with the LTTE, but it is impossible to say who ended up in the rehabilitation camps and at which level their involvement with the LTTE was. The source further said that there was no information from the government on the details of the length of or program for rehabilitation. The anonymous source finally commented that for the people who have been in the surrendee/LTTE rehabilitation camps the release from the camps is complicated. This group of people could be more vulnerable in future.

A leading human rights defender in Sri Lanka similarly informed the delegation that it is unknown whether there are low level cadres and supporters among the 10,000 LTTE cadres held in the rehabilitation camps in the North. In this connection he emphasized the lack of access to the camps by ICRC and the lack of decision by the government on their future. Formally, the LTTE cadres are detained, but the exact number of the detainees is not known and which charges they will be faced with is also unknown.

The Executive Director of the National Peace Council said that ICRC had not been allowed access to the rehabilitation camps, since the held people have detailed information on the fighting in the last stages of the war, which may be one of the reasons for the restricted access. The government is very concerned about allegations of war crimes and the possibility of some of its members being called to account before international forums. The Executive Director of the National Peace Council had visited a camp in Jaffna for softcore LTTE people. It was his impression that the held people were well taken care of.

The Director of an anonymous local NGO, among others working on relief and rehabilitation of the IDPs in the Northern and Eastern Provinces of Sri Lanka, informed the delegation that the profile of the LTTE cadres in the rehabilitation camps is mixed in the sense that at the low end of the scale some of them fought for only one day and some have not been active for five years and that at the high end a few among them are hardcore combatants. Some of them surrendered out of fear of otherwise being identified by either LTTE surrendeers or the army. The Director mentioned the lack of information on the legal status of the surrendeers. As there have been no court procedures and no convictions, the conditions for their internment in the rehabilitation camps and conditions for their release are also unknown.

According to the Director of the anonymous local NGO, some of the released cadres were given jobs in factories in the Southern part of the country. The government has chosen this solution in order to prevent the released LTTE cadres to regroup. Other released LTTE cadres tried to leave the country but some were detained.

### *1.2.1.1 Rehabilitation of former child soldiers*

UNICEF informed the delegation that right after the war, children and adults were often held together in the same camps before the minors were screened out and sent to rehabilitation centers for children. The children were 13 to 18 years of age and most of them between 16 and 17 years.



UNICEF further stated that recruitment of children by LTTE seemed to have increased towards the end of the fighting between Government forces and the LTTE in 2009. 560 children had been identified after the end of the conflict in 2009– most of them had been recruited during the last phase of the conflict, but not all of them. UNICEF informed the delegation that the children had undergone a legal procedure according to the Emergency Regulations adopted by the Government of Sri Lanka in December 2009, which define the legal framework of the process in treatment of children associated with armed groups. In this respect UNICEF mentioned that according to the procedure, the Magistrate decides whether each recruited child is to be sent to a rehabilitation camp or back to its' parents. UNICEF further explained that the Commissioner General of Rehabilitation is responsible for the rehabilitation and that there were three centres opened by the Government of Sri Lanka for the rehabilitation of child soldiers<sup>13</sup>.

UNICEF stated that as per the Emergency Regulation of December 2009, the rehabilitation programme of children formerly associated with armed groups is limited to a maximum duration of 12 months. Since May 2010 all the identified children have completed their rehabilitation and are now back with their families. Only in few cases, the families had not been identified and the children were placed in institutions.

### ***1. 2. 2 Situation in the camps***

#### ***1. 2. 2. 1 Number and categories of persons still in the camps***

UNHCR informed the delegation that around 50,000 IDPs are remaining in camps in Vavuniya as at the time of the interview (2 July 2010). UNHCR mentioned that some of the remaining 50,000 IDP's may not be able to return immediately because of a variety of reasons including: awaiting landmine clearance of their areas of return, prohibition by government from re-entry due to their former lands being now included in High Security Zones, or because they have no land to return to.

UNHCR explained that the Government has prioritised clearing residential areas of mines, whereas in some locations the surrounding areas of agricultural land are not yet cleared and it would take much longer for this to be completed. UNHCR further explained that this situation has an impact on the livelihoods of people who are at present dependent on assistance. IDP's were initially provided with 6 months' food assistance upon return, but they may require assistance for longer if they cannot engage in livelihood activities. In mine cleared areas assistance is provided to people to facilitate agricultural activities.

UNHCR further mentioned that some IDP's do not own land or do not have documentation to establish their land rights. The issue of land ownership has been made more difficult by the fact that IDP's who were displaced earlier are now also returning to areas where land is occupied by other IDP's/individuals. UNHCR further explained that some land has also been occupied by the army and some are defined as High Security Zones. UNHCR said that the government plans to resettle the remaining IDP's from Menik Farm before the end of August 2010, but that a number of these

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<sup>13</sup> The three centers are: 1) Ambe Pussa in Kandy which has been used for rehabilitation of LTTE as well as TMVP child soldiers; 2) Poonthotam center in Vavuniya used for vocational training of former LTTE child cadres and 3) Ratmalana Hindu College close to Colombo used for those former LTTE child cadres who wishes to continue their formal education

IDPs could face difficulties in returning due to land related issues, mine contamination and other factors.

A diplomatic mission similarly mentioned that some IDP's were not able to leave the camps, as their areas are still not cleared from mines. In fact, it is expected that there will be a residual of up to 25,000 IDPs who will not be able to return within the next 6 to 12 months. In contrast, other IDP's seem to have been returned too early in the demining process in the sense that they cannot return to their homes but are transferred to transit sites that supposedly should accommodate IDPs for one or two days but end up accommodating IDPs for months.

UNOCHA explained that the UN supports returns, only after verification that the areas have been certified as low risk or cleared of mines. Recently, small groups of returnees have been stuck in transit camps in Kilinochchi and Mannar as they are unable to access their homes for a number of reasons. Conditions in these sites are poor and overcrowding is a concern. Returnees normally stay in transit camps for 1-2 days but some have now been in the temporary camps for weeks and months.

IOM likewise explained that the conditions in the transit centres are becoming more difficult, as the returnees now have to stay for longer time. It used to be only 2-3 days. IOM further mentioned that the prospect of the government is that the return process should be concluded by August 2010.<sup>14</sup>

An official attached to a local Human Rights organisation said that the freedom of movement had improved with the opening of the camps, but some people are still not able to return to their villages because their land is occupied by the army and is defined as so called High Security Zones or special economic zones.

### *1. 2. 2. General living conditions in the camps*

UNOCHA informed the delegation that there is now an overall better service provision in terms of access to water / sanitation facilities and living space, as the numbers of IDP's have been reduced to approximately 55,000 individuals as of June 3, 2010. However, the camps are receiving less attention from donors as the priority has shifted to support for returns. As regards education facilities, UNOCHA commented that many teachers have returned back to their area of origin, and that at present there is a gap in teacher availability in Menik Farm, the remaining camp in Vavuniya.

UNHCR similarly mentioned that the services, including education and health have been drastically reduced and are now poor in Menik farm. UNHCR has advocated continued attention to the humanitarian needs of those in Menik Farm. The attention of most humanitarian actors and donors now is on the areas of return, which has caused a decline in the services and in some situations a service below standard. This raises concerns that a push factor could be created affecting the voluntary nature of return.

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<sup>14</sup> According to the government web page "Official Government News Portal of Sri Lanka" (1 September 2010.) the total number of Internally Displaced Persons (IDPs) in the Menik Farm is 28,659 as of 1 September 2010. The government has declared that the return will be completed at the end of 2010.  
[http://www.news.lk/index.php?option=com\\_content&task=view&id=16212&Itemid=44](http://www.news.lk/index.php?option=com_content&task=view&id=16212&Itemid=44)



IOM similarly mentioned that approximately 50,000 people are left in the IDP camps in Menik Farm as of end of June 2010. Services are still running in the camps, including food (WFP), health services and minor sanitary maintenance (IOM), but funds are running short. IOM provided shelters, water and sanitation (emergency toilets), and medical services, including ambulances. IOM also provides free bus service 3 times daily between the camps in Menik Farm and Vavuniya town.

The Norwegian Embassy mentioned that the situation in the camps has improved, but recently the donor aid to the camps has been reduced, which poses problems for service deliveries, especially food distribution by World Food Programme (WFP).

A diplomatic mission commented on the living conditions in the IDP's camps that they were not ideal, as funds for humanitarian assistance are drying up.

### *1. 2. 2. 3 Freedom of movement in and out of the camps*

Regarding freedom of movement in the IDP-camps, UNOCHA noted that as of 1 December 2009, a pass system was implemented allowing IDPs to move in and out of the camps. As registration is required there continue to be some limitations, full freedom of movement has not yet been achieved. Passes are given for one day, a week or longer. According to UNOCHA some people are also self-restricting their movements from the camps, not to miss out on return movements.

UNHCR explained that although IDP's remaining in the camps do not have full freedom of movement a lot of progress has been made in this regard. The pass system introduced in late 2009 in order to monitor movements have facilitated the movement of people in and out of the camps with around 1,000-3,000 passes being issued on a daily basis. People may leave the camp for up to one month and some people have also stayed outside the camp more than a month and returned without repercussions. UNHCR commented that rules for issuing passes are not always applied uniformly. Some people have been refused a pass, but it is not clear which profile these people had. However, the issuance of passes appears to have become significantly more routine in recent weeks (July 2010).

In most cases people will get a pass to go and visit their family members outside the camp. UNHCR further commented that for day-labourers who might have found work outside the camp the bureaucratic process under which the passes are issued is problematic, as it normally takes hours to process an application. The passes are issued mainly to monitor movements into the camp, and the IDP's have to turn in the passes when they return. The passes are issued free of cost.

The Norwegian embassy informed the delegation that the IDP's can leave the camps up to 20 days and come back. In this connection, the Norwegian Embassy mentioned that there were examples of people who had been released from the camps, had obtained passports on a one day service, applied for visa and had left the country.

A diplomatic mission found that the freedom of movement is limited by the pass system. IDP's are under some level of surveillance but they can apply for temporary exit permits.

### *1. 2. 2. 4 Human rights violations*

Answering to a question on the occurrence of incidents of human rights violations in the camps, UNHCR informed the delegation that there are reports of incidents of sexual and gender based violence in the camps. UNHCR further explained that in the beginning when NGO's had had a very

limited access to the camps, survivors of such incidents had very little in the way of support services, but with the pass system IDPs are able to access NGO services in Vavuniya district where a number of NGO's are working with gender based violence.<sup>15</sup>

### *1. 2. 2. 5. Family separations*

UNOCHA emphasized that an important issue for the IDP's had been lack of knowledge about family members, whether they were in the rehabilitation camps or gone abroad or died. Without proactive tracing and reunification activities through ICRC, people initially had been searching for family members through various means, including camp authorities, government agents and word of mouth. Now the process is more organised and handled through relevant government authorities. For example, government agents have registered people in the camps and the Department of Probation is leading to reunite separated children.

UNHCR similarly informed the delegation that initially when the camps were closed there were delays in the process of family tracing. After the opening of the camps at the end of the year, people can move around freely and this facilitated the ability to look for family members. As regards access to the people staying in the rehabilitation camps, UNHCR mentioned that it understood that ICRC now has no access, but until May 2009 ICRC registered a great number of the approximate total 11,000 separatees and family members can address ICRC to search for individuals. People can visit their family members in the rehabilitation camp once they are identified. UNHCR said that family members continue to report a lack of information regarding those who had been detained and those who are missing and presumed dead.

A diplomatic mission mentioned that after the opening of the IDP camps at the end of last year, people are able to go and search for family members, and the issue of separation is not so urgent any more. However, for returnees who have returned to their areas of origin without some family members it is still a huge issue. Moreover, a considerable number of returning IDPs, particularly women, have missing family members or family members in detention.

An anonymous source said that the government has resisted establishing a system for the IDP's to search their family members, which means that many family members are still suffering from lack on information on their family members' whereabouts.

IOM informed the delegation that the Commissioner General of Rehabilitation has established a Help line where people can deliver a written request if they want to search for family members. IOM offices in the North and East are advising family members who approach them. IOM said that some individuals are also approaching IOM in order to search for family members who may have been in one of the rehabilitation centres.

UNICEF mentioned that the organisation established a hotline in Vavuniya in cooperation with the government agent to help with family reunification for children separated from their parents. UNICEF explained that in the beginning of 2009 a national campaign on release of child soldiers "Bring Back the Child" was launched in partnership with the Government of Sri Lanka in order to

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<sup>15</sup> In a later correspondence (dated 3 August 2010) UNHCR referred to the Eligibility Guidelines for more details, ref. UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 July 2010, *Women and Children with Certain Profiles*, p 7

encourage parents to come forward and report their missing child and sensitize the public opinion and recruiters on the zero tolerance policy of the government on this issue. UNICEF said that since 2002 7,500 cases of reported child recruitments have been recorded in a database, out of which 600 cases are related to TMVP and 6,900 cases to LTTE.

### *1. 2. 2. 6 Consequences of registration in the camps*

As regards the registration in the camps and possible future consequences, UNHCR said that the returnees were de-registered from the camps in order to receive the shelter grant in the return areas. This is not always the case though for IDPs living with host families.

An anonymous source stated that for people who stayed in the ordinary IDP camps there would not be any legal or other consequences after being released and resettled from the camp. The source, however, stated that many former IDP's have to wait for long to have their ID documents issued.

The Executive Director of the National Peace Council stated that IDPs who were released from the camps will not necessarily be targeted, unless some fresh evidence surfaced of their involvement with the LTTE.

Regarding documentation for the cadres released from the rehabilitation camps, IOM explained that the CGR in connection with the release of individuals issues a release document which will serve as a temporary ID-document until an ID- card can be issued/reissued. The release document expires after 6 months and cannot be renewed. IOM issues an ICRS card for counselling purposes with a hot line number to the IOM office in Vavuniya. Answering to the question if the release document would make the holder more vulnerable, IOM found that this was not the case. On the contrary, these cards are also used as ID at check points and similar situations. IOM informed the delegation that the Departement of Registration of Persons had established mobile units to issue NIC in connection with the release of ex-LTTE-cadres from the rehabilitation centres. IDPs card is also used as ID documentation to obtain shelter grant from UNHCR and food from WFP. IOM found that this document would not make the holder more vulnerable.

A diplomatic mission stated that the released cadres will receive a document showing they have been released, but the document does not indicate that they have been cleared. The diplomatic mission commented that these people could be vulnerable to recruitment by paramilitary groups if they start operating in the Vanni.

### **1. 2. 3 Situation in the return areas**

#### *1. 2. 3. 1 General living conditions in the return areas*

UNOCHA explained that the UN has good access to the return areas and that now also around 60 NGO's, which have been approved centrally by the Presidential Task Force have access at project level.

UNOCHA commented that the policy of the government seems to be that the economic development in the area will provide people with a better quality of life and reduce tensions, which will pave the way for reconciliation. UNOCHA noted that the military presence in the North continued to be high. The military presence is noticeable in various aspects, such as running shops and participating in community services as well as building shelters for female headed households.

UNOCHA further mentioned that a total of 235,000 people have returned to places of origin or are staying with host families. UNOCHA commented that the progress in the return areas is impressive. With regards to establishing the basis for civil administration, government agents are back in their position and several schools and hospitals have also started to work. However, at the moment there are many gaps in essential services, economic activities remain limited, and the shelters are mainly of non-durable materials, which will make IDP's particularly vulnerable during the next monsoon season expected in September/October. UNOCHA also explained that the agricultural season starts in September and it will require inputs including seeds, equipment, storage facilities, etc. in order to be able to harvest in January 2011. This in turn will support improved food security throughout the Vanni.

UNHCR emphasized that access to land, housing and property is a crucial area of concern for the returnees. UNHCR and other organisations are supporting free legal services to assist returnees with legal issues, including those related to land, but not all geographical areas are covered. There are legal aid providers in Mannar, Jaffna, Vavuniya, Batticaloa and Trincomalee.

The EU delegation said that the resettlement/return process had been speeded up with the Government and that over a few months the number of IDP's had been reduced from 300,000 to 50-60,000. Demining activities had not been following with the same speed, which meant that living areas are cleared for mines but the surrounding areas including fields had not yet been demined. Accordingly, people's livelihoods, which are mainly based on agriculture, are threatened and food security is an issue. The now returned population also includes IDP's who were displaced in the 1990's and there is an uncertainty about land which had been transferred to other parties under the LTTE administration.

The EU-delegation noted that there is a heavy presence of military in the North, and 95% of the administration in the Vanni is a military administration. The vast majority of the population in the North are Tamils and at present they are an extremely vulnerable group. In contrast, the Sri Lankan Army is Sinhalese which could contribute to distrust between the two groups.

An official attached to a local human rights organisation mentioned that people have been returned to their areas of origin, and some people do neither have houses nor property to return to, so it is not really a resettlement process. In general, conditions are difficult in the return areas in the sense that access to health and food is limited.

Similarly, the Director of an anonymous NGO stated that when the government talks of resettlement, the IDPs are moved from one tent to their original places of residence and kept in tents again as their homes are destroyed.

The spokesperson from the British High Commission mentioned that the situation in the resettled return areas is characterised by people's focus on housing and land issues. The spokesperson mentioned that houses are in bad condition and that in some cases land formerly owned by one ethnic group has been taken over by another ethnic group several times during the conflict.

An international organisation working in the North referred to reports indicating that among the Tamil population there is a fear that the ethnic composition of the area could change, although at present there is no clear indication of this. Small groups of Muslims who were previously displaced by LTTE have also started to return to areas in Mannar. Economic investments are starting, but some local people fear they will benefit Sinhala contractors from the South rather than local

contractors in the North. According to the source, post-conflict reconciliation and stability dividends are more likely to hold if big infrastructure projects benefit local contractors and communities and any potential equity issues are addressed.

### *1. 2. 3. 2 Human rights*

In terms of vulnerabilities, UNOCHA mentioned that there are significant numbers of single female headed households, disabled and elderly amongst the returnees. In addition to their basic needs, they have also increased vulnerabilities related to non-durable shelters, health services and the continued heavy military presence. Ex-combatants could be vulnerable as they could be associated with the conflict including conscription of children in local communities. UNOCHA did not have specific information on human rights violations, but noted that some people might decline to report cases in the camps as well as in the North and East. Effectiveness of independent mechanisms such as the Human Rights Committee is limited.

The EU-delegation also noted the high number of female headed households (approx. 25% as per WFP and UNOPS) in the return areas. With the high numbers of military presence in the area, this group represents a potential risk of sexual and gender based violence. At the moment, the army is showing a fairly disciplined attitude. The EU delegation commented that future developments will depend on a correct management of the military. The EU delegation further mentioned that Tamils with physical or psychological disabilities are vulnerable in the present situation.

The EU-delegation noted that the access of international and national NGO's to work with the vulnerable groups in the return areas are controlled by a Presidential Task Force, and access may change on a day to day basis, depending on the situation. The EU delegation said that the NHRC have offices in Jaffna, Mannar and Vavuniya, and that their presence has to some extent a contraceptive function, although their effectiveness is limited due to lack of trust. In general, the population distrusts institutions after 30 years of war, for which reason the population in many cases would refrain from reporting incidents.

UNHCR informed the delegation that women – and especially single women in female headed households – report to UNHCR that they feel vulnerable as they are returning to an area with a military atmosphere. UNHCR explained that in general, the return areas are characterised by a fairly high number of female headed households, because husbands are either dead or missing or being detained in the rehabilitation camps.

UNHCR further explained that civilian authorities, including the police are still being established in the Vanni and are still not at full capacity. People in the Vanni have been in the heart of the conflict and would prefer to raise security issues with the police rather than the army presence. UNHCR noted that due to the limited access of NGO's in the return areas, access to seek protection is also limited. UNHCR noted that the limited access to the area also limits the information there is on the protection situation of returnees. UNHCR said that there are no significant restrictions on movements in the Vanni for the returnees, however, transport services remain inadequate. There are checkpoints, but it has not been an issue for the returnees not to have ID documents or not to be able to identify themselves.

An official attached to a local human rights organisation mentioned that there have been cases of sexual assault against women committed by the military, but most of the victims do not dare to come forward. In this connection the official mentioned that people in the newly cleared areas have



been under the LTTE system for a long time, and they do not have knowledge about the legal system. The official had information on some cases related to sexual abuses made by the army against local women, but only two of these cases have gone to court. The official further mentioned that women will be the victims in the sense that they will have to move, and some parents place their daughters in convents because they are afraid they might be harassed.

The Norwegian Embassy informed the delegation that there is a huge military presence in the areas where people have recently returned. The embassy mentioned that the government's perception seems to be that the IDP's who have now returned have been LTTE-sympathisers as they have been under LTTE control for a long period.

An anonymous source found that Tamils in general and especially Tamils from the Vanni are regarded as LTTE members. The anonymous source further stated that the NGO's which are operating in the North are under the control of the Ministry of Defence.

According to the Co-ordinator of Law and Society Trust, the army in general considers the people in the Vanni to be former LTTE members and sympathizers, as they have been under LTTE rule since the 1990's. For that reason the population is closely monitored and checked. The Co-ordinator explained that the policy of the LTTE was to take one cadre per family and in the last years even more from each family, which mean that all people in the Vanni have had some kind of affiliation with the organisation. The Co-ordinator was of the opinion that very few people joined the LTTE voluntarily and in the last years especially it would have been 99% of the recruited people who had been forced to join. The army, however, would not make a distinction between voluntary or forcefully recruited people. According to the Co-ordinator, no mass search has taken place in the Vanni, but the army is still questioning people.

The Co-ordinator of Law and Society Trust said that the army is looking for everyone who was somehow affiliated with the LTTE, including family members and giving them warnings, threatening them, and making sexual advances on women whose husband has been known LTTE leaders. The Co-ordinator of Law and Society Trust mentioned that recently there had been only few cases of violations committed by the army reported. However, the Co-ordinator mentioned examples on violations which included sexual abuse of two women in Vishvamadu in the Vanni committed by army soldiers. Moreover, some fishermen were beaten by the Navy for having gone fishing without permission in waters controlled by the Navy. The last mentioned incident took place in Iranathivu on the western coast of the Killinochi district.

The Co-ordinator of Law and Society Trust also mentioned that there is a cultural and religious dimension to the human rights situation in the North, as Buddhist monuments are now built up in an area where almost 100 % of the local population are Hindus or Christians. A further dimension is having signboards only in Sinhalese and giving Sinhalese names to villages and roads in areas where there is no Sinhalese population. (Ref. Annex 5 Photos from Vanni and Jaffna)

The Director of an anonymous local NGO working with relief and rehabilitation of the IDP's in the North and East informed the delegation that there are no reports of human rights violations, and the situation is very calm in the resettlement areas. People are broken and show no sign of protest. There are no paramilitary groups present in the Vanni whereas the army is present in high numbers among other reasons to closely monitor the population. According to the Director, there is an army person present in each and every lane all over the Vanni area. As an exception the Director of the



anonymous local NGO referred to the above mentioned rape case in Vishvamadu in the Vanni, in which four soldiers raped two women. The women went to the police to report the case, and the case was brought before a Magistrate who ordered the soldiers to be detained and no bail was given. Both women were sent back to their respective camps since the resettlement areas are not yet safe. The Magistrate was transferred.

The Executive Director of the National Peace Council said that in Kilinochchi and Mullaitivu districts there is no community left and that people are totally vulnerable. There is a huge army presence and a high potential for abuses. One or two reports on incidents of rape have been given involving the army, but according to the Executive Director of the National Peace Council more incidents have probably occurred, but people are vulnerable, cannot resist and dare not come forward.

A leading human rights defender in Sri Lanka informed the delegation that the area is heavily militarized and there is no freedom of movement inside the Vanni. The administration of the area is also under the military. Answering to the question if there was a certain profile of people targeted by the army in the Vanni, the source said that there was no clear profile. However, among those who may be vulnerable, the leading human rights defender mentioned the case in which four soldiers raped two women. He further mentioned that people who have been affiliated with the LTTE could be at risk. The leading human rights defender stated that if there were any sympathizers of LTTE remaining in the Vanni, the surveillance by the security forces are so strong that there is no room for them to operate.

The Executive Director of the National Peace Council said that some Tamils in the North recently have been denied the right to make political statements through religious activities. Catholic priests had, together with Tamil civil society leaders, organized a mourning for the victims of the war on 17 May, which is the one year anniversary for the war victory. The army unofficially threatened the priests and in the end only half of the expected people turned up, while many stayed away because they were afraid of reprisals.

An anonymous source underlined that there is no interest and a lack of goodwill on the government side to make an effort on reconciliation. In this connection the source referred to the event in a Jaffna church where a ceremony for the commemoration of victims of the war was arranged on victory day. However, the organizers were threatened to stop the arrangement.

The Co-ordinator of Law and Society Trust mentioned that no dissent to the mainstream public events is tolerated in relation to religious aspects. As an example, he also mentioned that the army had threatened and intimidated organizers and participants of the religious commemoration for deceased during the war, which was organised on the one year Anniversary day of the war victory in mid May 2010.

## II Situation for Tamils in Colombo

### II. 1 Security situation in Colombo

#### *II. 1. 1. Registration requirements for Tamils resident in Colombo*

Deputy Solicitor General Shavinda Fernando stated that the requirement for registration at the police originally was enforced to trace suicide cadres as an advantage to the house owners who could register inhabitants and show the list to the police during cordon and search operations. This requirement has now been lifted, as the security situation is less tense.

During the mission to Colombo at the end of June and beginning of July 2010 the delegation received various information from the interviewed sources related to the requirement for householders in Colombo to register members/inmates by the police and the practice of this requirement. However, after the return of the mission to Denmark and after receiving approvals of the forwarded notes from the sources, the situation in some parts of Colombo seems to have changed. For this reason, the most recent information on this issue is based on correspondence with some of the sources.

UNHCR informed the delegation that while registration of residents with local police is authorized by Sri Lankan law, and is arguably not objectionable under international human rights law, the registration requirement is now being applied in a discriminatory fashion exclusively to those of Tamil origin.

Residents have credibly reported to UNHCR that in mid-July public announcements were made in Tamil language only by mobile loudspeakers in the Wellawata area instructing all Tamils in the area to report to the local police stations for the purpose of registration. Sinhalese (and Muslims) in the area were not called to register. Media reports have confirmed the campaign in Wellawata, and its application to Tamils. Wellawata has the largest concentration of Tamils in the Colombo metropolitan area. UNHCR is not aware of similar campaigns elsewhere in the Colombo area, and the registration “requirement” seems not to be applied to Tamils elsewhere in Colombo. (Reference is made to Annex 6, UNHCR Note on Police Registration in Colombo, dated 2 August 2010.)

A diplomatic mission explained that the requirement for Tamils as well as other citizens in Colombo to register with the police when they arrive in Colombo and when they move to a new address was lifted since December 2009. However, latest reports suggest that the registration requirement has been re-introduced in Wellawatta, Colombo<sup>16</sup>.

According to the Executive Director of the National Peace Council, the security situation for Tamils in Colombo has much improved. However, in July the police began to register Tamil residents in some parts of Colombo where the Tamil concentration in the population is high. The police attempted to justify their actions saying that all residents, irrespective of ethnicity, were being registered. But in practice it was only Tamil who were compelled to register themselves. This was accompanied by reports of search operations also taking place.<sup>17</sup>

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<sup>16</sup> This information is dated 19 August 2010 in a correspondence with the same source.

<sup>17</sup> This information is dated 25 August 2010 in a correspondence with the NPC.

The Director of an anonymous local NGO stated that the police registration imposed under the Emergency Regulations has been lifted, but people are still asked to register when they move to a new address. Recently the population in certain areas in Colombo was requested to register again with the police<sup>18</sup>.

### ***II. 1. 2 Tamils' risk of arrest in Colombo***

UNHCR informed the delegation that there are still checkpoints in Colombo, but less than before. The scrutiny at checkpoints is less but it has not disappeared. There is a sense of easing, but the situation is not totally relaxed. After decades of monitoring, it is a progressive improvement.

UNHCR further mentioned that the number of arrests and detentions has decreased considerably. According to UNHCR, while Tamils could still be arrested in Colombo, arrests are less arbitrary and would probably be based on the person's past activities and/ or profile real or perceived.

UNHCR said it was not in a position to comment on the situation for non-refugee Tamil returnees from abroad, in Colombo as it did not actively monitor this group.

The EU-delegation similarly commented that the overall security in Colombo had been relaxed and cordon and that search operations have stopped. Random checks are carried out at the few checkpoints which are left, but the checks are not targeted a certain ethnic group.

ICRC said that in Colombo, arrests at checkpoints are rare and cordon and search operations in Colombo have stopped.

Most of the sources (Norwegian Embassy, a diplomatic mission, British High Commission, a local human rights organisation, the Co-ordinator of Law and Society Trust, the Director of an anonymous local NGO and a leading human rights defender) agreed that the security situation for Tamils in Colombo has improved, that the number of checkpoints has been reduced, and that cordon and search operations have been stopped.

The Norwegian Embassy informed the delegation that recently (16.6.2010) the police had closed off an area (Kirupalana) to do house to house search, which apparently was connected to alert operations for preparing for the celebration of Victory day on June 18, otherwise cordon and search operations have stopped. For the past few months there have been no reports of people who have been detained and the risk of arbitrary arrest for Tamils in Colombo was considered minimal according to the embassy. The embassy said that the profile of people at risk of being arrested today would include anti-governments views or pro-LTTE views, regardless of ethnicity but related to political opposition.

A diplomatic mission similarly stated that there are no longer "white van abductions" and only few cases of arrests. When asked about the profile of people at risk of being arrested, the diplomatic mission informed the delegation that the following groups will be at risk: Tamils who lived for some years in Colombo and abroad and returned to the North, Tamils who left the country around the time of war and applied for asylum and came back, Tamils involved in money transfer, Tamils with a LTTE profile and any journalist, human rights activist, and supporters of the opposition.

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<sup>18</sup> This information is dated 16 August 2010 in a correspondence with the source.

Answering the question whether the security for Tamils in Colombo has changed since the end of the conflict, the spokesman from the British High Commission stated that it has been relaxed and generally improved. There is less military on the streets, but Tamils still have a higher risk of being arrested than Sinhalese, especially if they do not have a reason to be in Colombo. Despite a relaxation of the emergency powers Tamils are still required to register with the local police, according to the source. Tamil returnees from abroad would not be at a higher risk of arrest than other Tamils in Colombo, according to the British spokesperson.

The Co-ordinator of Law and Society Trust stated that there are only few cases of arrests and detention of Tamils under the Emergency Regulations now, and that mass arrests have stopped. Asked about the situation in the Tamil Lodges in Colombo, the Co-ordinator mentioned that presently there is no information, which is a good sign, as there were previously daily telephone calls concerning arrests of Tamils in the lodges.

The Director of an anonymous local NGO mentioned that cordon and search operations still take place among other places also in the Tamil lodges, and that a few checkpoints still exist. Roadblocks may be put up and random checks are undertaken. However, the situation related to checks has changed and people are rarely taken in for further investigations during checks. The director further explained that there are fewer violations now than before the war ended, but that it still happens that people are harassed and sometimes picked up. The director also mentioned a case that took place in 2010 in which a female Tamil staff member was brought to the police station in connection with a check. The staff member was not questioned but kept at the police station overnight. The NGO's lawyer went to the police to complain and she was released the following day.

According to Ms. Kishali Pinto-Jayawardene, (who is a human rights lawyer and works as a senior consultant at the Law & Society Trust), ordinary Tamils still face some risk. If they have been long standing residents of Colombo, the risk is less, but Tamils from the North and East who travel to Colombo still face some measure of risk. Ms. Kishali Pinto-Jayawardene stated that Tamils could still be "picked up" in connection with checks at checkpoints also in Colombo. In this connection Ms. Kishali Pinto-Jayawardene emphasized that the security environment has not substantially changed and there is no independent control of the police as long as the Emergency Regulations are enforced (and an independent National Police Commission is not in place). The risk is no longer as high as it used to be, but Tamils still have fear that they would be targeted.

An anonymous source informed the delegation that there had been few cordon and search operations in connection with the elections, but that checkpoints are now reduced and that there is less intimidation in connection with checks, also for Tamils. The anonymous source underlined that the security apparatus is still in place in Colombo, but that the apparatus is less visible physically. According to the source, there is a strongly increased level of intelligence surveillance, including tapping, of certain groups. The source identified groups such as well educated Tamils from North and East who are outspoken and human rights defenders in general. The source finally explained that for the average Tamil people with no high profile, the security situation has improved.

According to a leading human rights defender in Sri Lanka Tamil people still have a feeling of insecurity and a feeling of being "losers". The source said that in reality there is no evidence to support this feeling of insecurity and fear, and there are no reports of abductions and killings in Colombo.

Answering to the question on possible reminiscences of LTTE in Colombo, the leading human rights defender stated that there is no indication of any presence of LTTE cadres in Colombo. In the areas of Wellawatte and Kotahena, where the concentration of Tamil people is biggest, there are no present incidents to suggest activities with any LTTE involvement. In this connection the source underlined that many LTTE cadres had been killed or disappeared at the end of the conflict when there was intensive political violence, including abductions and killings.

### ***II. 2 General living conditions and human rights situation in Colombo***

UNHCR stated that Colombo has a mixed population and that the general human rights situation in Colombo as regards living conditions, access to employment and education should not pose systematic problems to Tamils.

As regards general living conditions for Tamils in Colombo, the EU delegation noted that generally the Tamils are trusted and do not have major difficulties in finding jobs, however, Tamils seem to be discriminated in terms of jobs in the public administration. With respect to education, Tamils have the choice of sending their children into Tamil schools in Colombo.

The spokesperson from the British High Commission similarly found that Tamils would have equal access to the job market in the private sector, where the best qualified candidate would be recruited, whereas in the public sector not many Tamils are employed.

The Director of an anonymous NGO similarly mentioned that job opportunities in the private sector are the same for Tamils as for Sinhalese applicants, since the private sector most often want the best candidate; besides, many CEOs in companies as well as NGOs are Tamil. As regards the public sector, candidates must pass a test in Sinhala, which excludes many Tamils.

The Norwegian Embassy commented that in general, Sinhala is the dominating culture in Colombo, which has its own effect on the Tamil ethnic minority, but that lately no violations of human rights have been reported. In some Tamil areas of Colombo, as for instance Wellawatte, the general living conditions have improved as people are now moving to the North and the area is becoming less congested, and the house rents are going down. Access to education facilities is not a problem, and there are also Tamil schools. The access to government jobs is limited, but private sector jobs are not a problem.

According to the Norwegian Embassy, a returnee from abroad would not be visible in the community, and it would not be a problem to find housing and a job.

Regarding the Tamil lodges in Colombo, the Norwegian Embassy explained that the “culture” of the Tamil lodges in Colombo had more or less disappeared as it is now possible to travel to and from Jaffna by bus, and people prefer to leave early morning and go back on the same day.

An official attached to a local human rights organisation similarly stated that the general living conditions for Tamils in Colombo have improved a lot. The Tamil lodges are no longer being used as much as before, as the A9 main road to Jaffna reopened which implies that the Tamils no longer need to stay in Colombo overnight. More and more Tamils are also moving back to Jaffna from Colombo.

The Executive Director of the National Peace Council stated that the general living conditions for Tamils in Colombo are much better than in the North and the East due to the fact that in Colombo there are jobs and businesses. However, Tamils are a little more vulnerable to being targeted for

extortion, especially if they do not speak Sinhala. The Tamil lodges are still being used, but no incidents have been reported and no arrests have taken place, although not all information on what is going on is let out in the public. The police and the army are still looking for the LTTE with improved intelligence, which means that there will be more arrests of suspects instead of killings compared to previously.

The Director of the anonymous local NGO further mentioned that human rights also have religious dimensions. He referred to an article in Lanka News on 26 June 2010<sup>19</sup>. According to the source, a church in Colombo was bulldozed and demolished and its priest was beaten up on 26 June 2010, which is a Buddhist holiday. The police stated that they had come to eliminate unauthorized buildings.

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<sup>19</sup> *Worst sacrilege on most religious Poon Poya: Rajagiriya church demolished to the ground and incumbent assaulted*, downloaded on 1 July 2010  
<http://www.lankaenews.com/English/news.php?id=9698>



### **III Situation for Tamils in the East**

The EU delegation mentioned that in the East, the situation is moving in the right direction. The population is more mixed with a more or less equal percentage of Muslim, Singhalese and Tamil population. The EU delegation further explained that the scenario in the East is different from the North. The LTTE withdrew from the East and many suspected LTTE supporters started moving out and into the Vanni in 2007. People had the freedom to move out and go on to stay in the North as well as with the host families.

#### **III. 1 Security and human rights**

The Executive Director of the National Peace Council stated that the security in the towns Trincomalee and Batticalore is better than in the rural areas in the East. In the rural areas the local poor people feel vulnerable in the presence of the vast army.

The Norwegian Refugee Council (NRC) said that with regards to security, paramilitary presence has decreased in comparison to the conflict period. Army presence is still visible and there are still checkpoints on the way from Batticaloa to Colombo. Random checks are still being performed.

IOM considered that the security situation in the East is generally stable, that there are few checkpoints and that there are no longer are reports of paramilitary groups operating.

An official attached to a human rights organisation found that there is a heavy militarisation also in the East. Compared to the North, the East is more open and people can move more freely. The source further explained that the militarisation of the North and East has not been reduced after the war, on the contrary, it has been institutionalised, and recruitment to the army has increased after the war ended. The army in the East is internally divided in supporters of the government and supporters of General Fonseka. The same source added that the occurrence of arrests and detention in the East are limited.

The Director of the anonymous local NGO commented that focus of the government is not on the East but on the North. The Director said that the security is better in the East compared to the North as long as people do not involve themselves in politics and speak against the local government.

#### **III. 1. 1 Role of remaining scattered groups of LTTE**

UNHCR informed the delegation that at present there are no known activities of the LTTE in the East. The security situation is a lot more stable now with fewer security incidents being reported. UNHCR further said that the TMVP is still present and now a part of the government.

When asked if there are any remaining groups of the LTTE operating in the East, a diplomatic mission said that they have not heard of such information. However, rumours of some LTTE activity in the jungle areas of the East (former LTTE-controlled areas) persist.

The Norwegian Embassy mentioned that LTTE is no longer a systematically organised group in the East, but that TMVP is active and divided into two groups – Karuna and Pillayan. Both groups have officially handed over their weapons, and are now part of the mainstream government.

Answering to the question whether the LTTE is a factor in the East, the Director of the anonymous local NGO said that this was not the case.

The Executive Director of the National Peace Council similarly mentioned that there are no signs of remaining groups of the LTTE in the East.

A leading human rights activist in Sri Lanka said that there is an uncertainty and a general talk of possible reminiscences of LTTE left in the East, which creates a feeling of uncertainty among the population, but there is no evidence of any regroupings or other activities. In this connection, the source also mentioned that there is a high military presence in the area.

An official attached to a human rights organisation said that presently no known remaining groups of the LTTE are left in the East; however, if the government continues to ignore the rights of the minority population, it will not take long before the LTTE is back.

### **III. 1. 2 Presence and role of paramilitary groups**

The spokesperson from the British High Commission mentioned that TMVP<sup>20</sup> is keeping a low profile in the East, and that the security situation has improved. According to the spokesperson, it is reported that paramilitary groups are operating and targeting business people for protection money, but these groups are not named.

A diplomatic mission commented that overall the activities of the paramilitary groups in the East have been reduced. There is considerably less in-fighting between the Karuna-group and the Pillayan groups in the area, but there are criminal movements involved in harassment and sexual abuses.

Asked about the risk that these groups will be to civilians, a diplomatic mission replied that the target for these groups could be anybody who has got money. In that respect a returnee from abroad could potentially be a suspect of having money, but the diplomatic mission was not aware of any incidents.

The Norwegian Embassy informed the delegation that in the East the paramilitary groups are not visible, but that they may work underground, and that there are reports that the groups of TMVP in Batticaloa and Trincomalee and Karuna's group in Ampara target business people to collect money.

A leading human rights activist further mentioned that there are reports of infighting and non-cooperation between para-military groups in Ampara. He added that the armed groups are operating irrespective of checkpoints.

Responding to the question on the presence of para-military groups, the EU delegation mentioned that it is difficult to comment on this, however, there is no visible presence of named groups but there are reports of crime related activities as threats and extortion. There are rumours that paramilitary groups are behind these activities, but these activities are substantively reduced

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<sup>20</sup> TMVP: TamilEela Makkal Viduthalai Pulikal (Tamil Eelam Peoples Liberation Tigers) is the political wing of the paramilitary group formerly known as the 'Karuna group'. It was formed by breakaway LTTE leader V. Muralitharan (alias 'Colonel Karuna'), who led a split in the LTTE in 2004, leading to the secession of a large chunk of the organisation in the Eastern Province of Sri Lanka. After a conflict Karuna formally left TMVP and joined the ruling coalition UPFA now as a Deputy Minister of Resettlement. TMVP is now led by Eastern Province Chief Minister S. Chandrakanthan, better known as Pillayan.  
Source: Country of Origin Information Report, Sri Lanka, 18 February 2010, UK Border Agency, Country of Origin Information Service

compared to the past. It was the impression of the EU that the security situation is now stabilising. There is a military presence in the East, but compared to the North it is minimal.

The EU delegation further commented that the TMVP today is part of the mainstream government politics, Pillayan at the level of local government and Karuna at the central level, and that there is no evidence of any in-fighting between the groups in the East.

Similarly, a leading human rights activist informed the delegation that two para-military groups are present in the East. Pillayan/TMVP is now in the Provincial Council but the group has no funds to maintain its cadres, for which reason they engage in extortion activities. Karuna's group is now closer to the central government and his group is to some extent working with the security forces in Batticaloa.

According to a leading human rights activist, the para-military groups are engaged in abductions and extortion activities. The same source said that no particular group of people is targeted for these activities but that the activities have a more generalized target. The presence of the groups is a concern and lead to a feeling of insecurity for local people. According to the source, the number of cases has been considerably reduced in 2010 compared to earlier. The source said that he made a recent visit to the East and that in this connection he did not receive any reports on cases related to abduction and killings. However, there is still a generalized fear among the local people.

The Executive Director of the National Peace Council commented that TMVP is now part of the ruling party. Answering the question whether there is any fighting between TMVP and Karuna, the source said that to his knowledge this was not the case. Over the last year security has improved and there are no signs of fighting.

Concerning paramilitary groups, the director of the anonymous local NGO informed the delegation that Karuna and his cadres are very powerful and active in the East. Karuna is supported by the central government and in opposition to Pillaiyan's group, which is less active and not supported by the central government. During the elections there were many incidents, including extortion carried out by Karuna's cadres. The director further informed the delegation that many incidents related to the paramilitary groups are not reported as people keep quiet about them.

As regards the paramilitary groups an official attached to a human rights organisation explained that Karuna is now directly part of the UPFA and the central government, whereas Pillaiyan/TMVP today is very weak at the central level, because his party did not gain any seats in the parliamentary elections. According to the official Karuna's armed group is being used to force people to give up land and for occupying land for the Sinhalese population and members of the army.

An anonymous source informed the delegation that Karuna's groups supporting the Sinhalese key leadership are active in the East, but violations have been reduced compared to one or two years back. According to the source, the role of these groups were previously "to do the dirty job of the government" in connection with identifying members of the LTTE and abducting them. The source informed the delegation that now the groups are less visible and more engaged in criminal activities like extorting business people.

Ms. Kishali Pinto-Jayawardene informed the delegation that Karuna's and Pillayan's groups in the East are occupying land, but people do not fight to get their land back. Ms. Kishali Pinto-Jayawardene further explained that land rights were a political issue in the East, and that the

judiciary is constrained when the para-military political system is responsible for abuses. In other cases that are less political, the judiciary still has the power to intervene.

A diplomatic mission said that there are reports of forced recruitment in Ampara district by the former regional commander Iniya Barrathi who was part of the TMVP breakaway faction.

Asked about the presence of para-military groups in the East, UNHCR similarly mentioned that there are international advocacy reports that child recruitment is still taking place.<sup>21</sup>

UNICEF said that they have been working closely with the Sri Lankan government since 2008 to stop recruitment of children. At that time the Government of Sri Lanka, the TMVP and the United Nations in Sri Lanka signed a tri-partite Action Plan aimed at halting all recruitment by the TMVP and releasing all children within its ranks within a three months period. The agreement led to a significant decrease in the number of recruited children by TMVP. Since mid 2009, recruitment of children stopped and documented cases of recruited minors by TMVP have been released with the exception of few isolated (4) cases (out of 596) that are still being investigated by the police. UNICEF further informed the delegation that in the beginning of 2009, the President together with UNICEF had launched a public sensitization campaign, which had promoted a zero-tolerance to child recruitment.

### ***III. 1. 3 Situation for Tamils in conflict with or in opposition to the TMVP***

The diplomatic mission said that some Tamils, who were former TMVP cadres, had been recruited into the police force in the East, and that some former TMVP cadres have also been integrated into the intelligence service.

The Director of an anonymous local NGO stated that returnees from abroad affiliated with TMVP opposition could face a problem. People in opposition to the TMVP would keep a low profile in the East, since there is an ongoing struggle between Karuna's armed groups and Pillayan's armed groups.

As regards people who oppose the TMVP, the Norwegian Embassy mentioned that the paramilitary groups will not target the political opponents directly, but work through the government structure. The embassy commented that during the election campaign it was reported that political opponents including their family members were threatened and warned, but this was not a phenomenon which was limited to the East.

When asked if people in opposition to the TMVP would be at risk in the East, an official attached to a human rights organisation answered that today it would not be a major problem because the TMVP does not have much power. According to the Director for a Human Rights organisation, people in opposition to Karuna's armed group could be in trouble.

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<sup>21</sup> UNHCR referred to the Eligibility Guidelines: "...UNHCR considers that women and children with the specific profiles outlined above, as well as child soldiers, may be at risk on the ground of membership of a particular social group depending on the circumstances of the individual case."

*UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 July 2010, page 8  
<http://www.unhcr.org/refworld/pdfid/4c31a5b82.pdf>

**III. 1. 4 Possibilities to obtain protection if targeted by TMVP or paramilitary groups**

Answering to the question on the situation for a person who is in opposition to the TMVP (Pillayan), a leading human rights activist replied that if a person is targeted in the East, he/she may seek protection in Colombo, as the TMVP (Pillayan) would not have the power to target people outside the East.

In terms of human rights violations, the EU delegation commented that there is no specific information on human rights violations in the East. The EU delegation further said that the National Human Rights Commission has a physical presence in the East and is considered to be a trust factor by the local people, whereas in general the authorities seem to be less trusted.

As regards the possibility to seek protection from these groups in the East, the anonymous source stated that there is no one to address as the NHRC is not working and the police does not have any power to deal with groups supported by the government. The anonymous source stated that the police and the army are enjoying a high level of impunity in the East.

In the East the situation is complicated, according to Ms. Kishali Pinto-Jayawardene, because many of the persons in power are former para-military commanders. Ms. Kishali Pinto Jayawardene explained that people are in general too scared to fight for their rights because it will expose them.

The Director of the anonymous and local NGO said that it would be very difficult to seek protection from the police because they “walk hand in hand” with the paramilitary groups.

As regards the possibility of seeking protection, an official attached to a human rights organisation mentioned that the courts are operating in the East, although the trials may not be fair, judges are not independent and the army is enjoying impunity.

**III. 1. 5 LTTE members, ex-fighters and supporters, LTTE family members and LTTE returnees**

Responding to the question on whether people with a certain profile (members, ex-fighters, supporters, family members or previous affiliated with the LTTE) could be targeted in the East, the spokesperson from the British High Commission mentioned that the situation is not clear and referred to the 12,000 people with suspected LTTE links kept under detention in the rehabilitation camps and whose situation is still unclear.

As regards security for LTTE members and supporters returning from abroad, a diplomatic mission stated that it is still difficult to assess whether they will be at risk. Some LTTE supporters have returned to their daily lives and do not seem to be at risk. However, there are reports on revenge towards LTTE cadres who returned to their home region in the East. Before the elections there were reports of incidents in some communities because of distain of people who had been involved in recruitment of children.

The Director of an anonymous local NGO stated that LTTE affiliates would have a very difficult situation if they returned. In the East everybody knows each other, according to the Director, and the support to the LTTE was based on a more willing and voluntary action than in the North.

Regarding LTTE supporters and family members there were reports in the early 2009 about killings in the East, but the security situation has changed completely according to the Norwegian Embassy, and there are now no reports. The embassy commented that it would probably be difficult for a



known member of the LTTE to return to the East. In this connection the embassy referred to the cadres in the rehabilitation camps in the North and the 1,350 who had been screened out for prosecution and for whom it is still undecided whether there will be an amnesty or not.

An official attached to a human rights organisation mentioned that returnees from abroad who are wanted by the government will face problems if they returned. The source also mentioned that many former LTTE members in high positions have now joined the Sri Lankan government and will be able to provide information on other LTTE affiliated people. It is also worth mentioning that the government may not differentiate between the LTTE supporters and not supporters. To them all are the members of the diaspora. The official added that this was built on assumptions since there was no recent information on returnees from abroad.

Answering to the question on the situation of a returnee from abroad who previously had supported the LTTE or had been affiliated with the activities, a leading human rights activist found that he/she would probably raise suspicion and found it would be unlikely that somebody who was known to be involved with LTTE-activities would return.

*Reference is made to I. 2. 1 for more information on LTTE members and supporters.*

### **III. 1. 6 Other returnees**

UNHCR did not have any particular information on the situation in the East for non-refugee returnees from abroad. UNHCR did monitor refugees returning from India to the East. UNHCR commented that there has been no evidence that returnees have been particularly targeted. The main concern for returnees is now related to land and livelihoods.

When asked about the security situation for returnees from abroad, the spokesperson from the British High Commission said that there had been instances of Sri Lankan Muslims who had returned voluntarily from the UK and set up businesses that had been harassed and targeted for extortion from unknown groups asking for protection money.

The Executive Director of the National Peace Council commented that no Tamils would like to return, as the Sri Lankan army is still strong and the Sinhalese are ruling Colombo. Tamils do not see much hope of improving the situation in the North and East. Sinhalese people are moving to the North and the East while the Tamils are leaving the country.

Answering to the question on the situation for people who were previously in conflict with the LTTE, the official attached to a human rights organisation replied that they can return without facing risks. However, the same source mentioned that it will be difficult for the Sri Lankan diaspora to come back if the decision on the GSP+<sup>22</sup> deal is negative, as the government will assume that they have contributed with negative information to that decision.

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<sup>22</sup> Generalised System of Preferences Plus (GSP+). System through which the European Union extends preferential access to its markets to developing countries; eligibility is determined based on compliance with international human rights treaty obligations.

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=589>



### III. 1. 7 IDP's

When asked about the situation for IDPs in the East, all sources referred to the group of approximately 6,000 people from Sampur area in Trincomalee district who have been unable to return as their land is designated as High Security Zone (HSZ) and Special Economic Zone (SEZ).<sup>23</sup>

The EU delegation said that only a small group of IDP's remain in the East and cannot return to their area of origin, especially in Trincomalee District, which is defined either as a High Security Zone (HSZ) or Special Economic Zone (SEZ). According to the EU delegation, there is a concern that this group could disappear from the list of IDP's, as the population is scattered around and not registered in a camp. Further, the delegation commented that there is a high number of IDP's, who previously moved from the East to Vanni, who is now sent back to the East. In this connection the delegation pointed at the land issue as a potential "time bomb" in the East.

The Norwegian Embassy said that some IDP's originally from the East moved into Vanni during the war and that some of them have been resettled in isolated areas. A small group of IDP's (13-1,400 families) from Sampur close to Trincomalee cannot return to their area of origin as it is still declared a High Security Zone. There were no reports of human rights violations and the embassy explained that some of the resettled areas are far away from intimidation.

NRC further informed the delegation that people continue to remain displaced by official and unofficial High Security Zones in the East. The largest example is the Muttur/Sampur HSZ in Trincomalee which has prevented over 1,760 families displaced since 2006 from returning to their areas of origin. They are living with host families or in transit sites.

The Norwegian Refugee Council (NRC) stated that the resettlement scenario is better in the East than in the North. For example, in Amapara District there are 297 Vanni IDP families that are still living in and around Kalmunai town. There are also IDPs in Trincomalee and Batticaloa districts but not in the types of numbers that we are seeing in the North.

A diplomatic mission mentioned that many IDP's have returned, but that 6,000 IDP's from Trincomalee cannot return as their areas are defined as High security zone.

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<sup>23</sup> For more information on IDPs in the East, reference is made to Internal Displacement Monitoring Centre, Norwegian Refugee Council, 10 November 2009, Sri Lanka, *Continuing humanitarian concerns and obstacles to durable solutions for recent and longer-term IDPs*, page 6-7  
[http://www.ecoi.net/file\\_upload/1002\\_1258741265\\_srilanka-overview-nov09.pdf](http://www.ecoi.net/file_upload/1002_1258741265_srilanka-overview-nov09.pdf)

## IV Freedom of movement

UNHCR informed the delegation that there are no restrictions on travelling between districts for Sri Lankan nationals, and that for the first time in many years the country is open for travel from South to North except into the Vanni or formerly LTTE controlled areas. UNHCR further mentioned that travel to Jaffna by air requires clearance from the Ministry of Defence.

The EU delegation commented that freedom of movement no longer is a concern and that Sri Lankan nationals can now travel between districts and all over Sri Lanka.

A spokesperson from the British High Commission and the Norwegian Embassy similarly stated that the situation has improved in Sri Lanka since the conflict ended. The A9 main road to Jaffna opened and there are no restrictions on travel between districts. There is one major check point on the A9 main road at Omanthai where everybody is checked. However, there remain High Security Zones in some districts, which are maintained by military personal and access requires Ministry of Defence clearance.

The Executive Director of the National Peace Council said that there are no restrictions to go to Jaffna, but off the A9 main road, there are restrictions on movements in the interior of the Vanni. However, a recent government circular issued in July<sup>24</sup> by the Ministry of Defence restricts all NGO's access to the North. A prior approval of the Presidential Task Force for the North and also the Ministry of Defence has been made compulsory for the movement of human and material resources into the North.

The Director of an anonymous local NGO mentioned the High security zones (HSZ) as a barrier to freedom of movement as it needs a clearance from the Ministry of Defence, especially for people who have formerly been land owners in the areas. He also said that there are checkpoints in the Vanni, at which people are asked to present their NIC or IDP document.

The Co-ordinator of Law and Society Trust mentioned that restrictions on movement in the Vanni area and access to this area, in which people have resettled, are problematic for foreign nationals and also for Sri Lankan citizens. He had witnessed that in the newly cleared return areas even family members are not allowed to visit their family in Mullaitivu.

The anonymous journalist mentioned the restrictions in the access to the North limiting the reporting from that area. Journalists have to apply for permission from the Ministry of Defence to visit the area north of the Omanthai checkpoint at the A9 main road or to travel by air to Jaffna. The journalist further explained that the authorities normally would impose delays on such an application.

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<sup>24</sup> The source informed the delegation about the government circular by email on 25 August 2010 after the mission ended.

## V Freedom of expression

UNHCR informed the delegation that today concerns have been raised for civil rights advocates and human rights defenders as well as journalists and political opponents who had been critical of the government.<sup>25</sup>

### V. 1 Political activists

The EU delegation explained that although the freedom of expression legally is guaranteed in the Sri Lankan Constitution, in practise freedom of expression is restricted.

A diplomatic mission said that every activity related to political dissent is problematic. Political opposition can barely be expressed in public, neither by journalists nor other groups, and that there is no difference between ethnic groups when it comes to political dissent. The level of persecution also affects the civil servants and there are examples of transfers of critical judges as well as employees within the army who at the time of the presidential elections supported the opposition candidate.

As regards the situation for the opposition, a spokesperson from the British High Commission similarly stated that there are limited rights for expression, for instance, during the presidential elections, the campaign posters of candidate General Fonseka were taken down and some of his supporters lost their jobs. There were reports of members of parliament receiving threats. The spokesperson further commented that after the elections there have been few opponents expressing themselves in public.

The Norwegian Embassy stated that the situation for political opponents and journalists is difficult, especially since the last election when the government gained almost 2/3 of the votes. Many journalists have left Sri Lanka and journalists, including senior journalists, have stopped writing.

The Executive Director of the National Peace Council said that people thought things had been improving before the presidential elections in January 2010 and parliamentary elections in April 2010, but that now they had become worse in the area of political freedoms. Protests and demonstrations by the opposition parties have been broken up by the police, opposition members of parliament have been arrested for making public protests, a media station critical of the government has been attacked in Colombo despite all the security presence without anyone being arrested. The source further said that the culture of impunity has grown. (Reference is made to chapter VI “Legal safeguards”)

### V. 2 Human rights defenders

Several sources (a Director of the anonymous local NGO, a leading human rights defender in Sri Lanka and the Co-ordinator of Law and Society Trust) mentioned that NGO's who had participated

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<sup>25</sup> UNHCR referred to *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 June 2010, page 5  
<http://www.unhcr.org/refworld/pdfid/4c31a5b82.pdf>

in providing information on human rights to the EU in connection with the GSP+<sup>26</sup> negotiations had been intimidated and threatened.

A leading human rights defender in Sri Lanka stated that media people and human rights activists who provide any information which is seen as critical to the government are at risk.

The Co-ordinator of Law and Society Trust similarly mentioned as an example that the government had stated in public that two NGOs were involved in commenting the GSP+ agreement. The director of a well known NGO had received death threats before in relation to their work on GSP+ issues. As a consequence, other human rights NGOs are now scared of reprisals.

A Director of the anonymous local NGO mentioned the fact that NGOs are monitored under the Ministry of Defence, which is a sign of lack of freedom of expression. The government considers people who speak in favour of human rights as traitors.

The Executive Director of the National Peace Council finally emphasized that the NGOs are now controlled by a Presidential Task Force in order to ensure there will be no “fall outs”. The Executive Director of the National Peace Council said that people in the North were cautious to speak against the government, especially the Tamils but also Sinhalese journalists. It is unpredictable how the government will react, and people do not know where they cross the line. There is no reliable protection from the police or the judiciary if one speaks against the government.

An anonymous source said that people in general are practicing self censorship. The anonymous source referred to the website of the Ministry of Defence (December 2008)<sup>27</sup>, which had published the names of Tamil lawyers who had taken cases with high profile LTTE members.

### **V. 3 Journalists and media people**

Ms. Kishali Pinto-Jayawardene, who is a human rights lawyer and a media columnist (in the Colombo based Sunday Times), stated that the restrictions on the freedom of expression continue to be bad. Journalists and other writers are intimidated if they express themselves critically. Even though it is one year after the war ended, the intimidation has not stopped. There are verbal attacks in the media on journalists and people who express themselves critically against the government. As a consequence, the media, including the independent media, are repressed and practice self-censorship, which is a concern for the media freedom. Also many senior people, including journalists do not want to express themselves critically in regard to attacks on Rule of Law safeguards.

The Director of the anonymous local NGO said that there is a self imposed censorship among media and opposition. If one criticizes the government, one can easily get into trouble, for which reason there is very little antigovernment press coverage. The press is generally attacking the opposition.

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<sup>26</sup> Generalised System of Preferences Plus (GSP+). System through which the European Union extends preferential access to its markets to developing countries; eligibility is determined based on compliance with international human rights treaty obligations.

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=589>

<sup>27</sup> December 28, 2008, A Statement by the Asian Human Rights Commission, A president's counsel and several lawyers blamed by the Sri Lankan government for regularly appearing for detainees charged with terrorists activities

<http://www.ahrchk.net/statements/mainfile.php/2008statements/1825/>

The director stated that the most independent journalists have either been killed or were harassed and left the country. The result is a sub-missive media and no free press.

An anonymous journalist working for the international news media said that many journalists are practicing self censorship, especially with regard to sensitive issues such as human rights and the former conflict. The journalist mentioned that if one reports critically on these issues, one is considered to be un-patriotic and a traitor. The journalist also mentioned that the press had been silent on these issues after the end of the conflict. The source mentioned that the government is blaming the journalists for being the reason for the critical positions of the UN and the EU on human rights in Sri Lanka. The source further mentioned that the general working conditions for Tamil journalists had not improved after the conflict ended and that there is still a deep rooted suspicion against Tamils and no discussions on human rights in the Tamil press.

The anonymous journalist also gave an example where a journalist had been denied access to visit the hospital in Vavuniya early in 2010. The government does not allow journalists to photograph or talk to the victims of violence in the final stages of the conflict. The journalist commented that this is probably due to fear that civilians may come out with accounts of what happened to them during the final stages of fighting. It could go against the interest of the security forces.

Asked if journalists in Sri Lanka would have the possibility to seek protection, the anonymous journalist said that Sri Lankan journalists who report to foreign media in Sri Lanka could get support from the foreign embassies/missions in terms of legal assistance and payment of bail if they were detained. The source said that for him, seeking protection by the police was not an option. In addition, threats received by journalists should be interpreted as intimidations and are used to scare people. If the authorities want to eliminate a person, usually there will be no prior warning.

The anonymous journalist said that the East is easier in terms of access, but as the East is controlled by TMVP journalists based in the East cannot write about child soldiers recruited by TMVP and government corruption. The source added that the media he works for have stringers in the East. However the stringers do not produce much because they are frightened.

The anonymous journalist stated that it is possible to criticise the government depending on the subject. Sensitive issues for the government are the war period and human rights. According to the same source there is a struggle going on between the President Mahinda Rajapaksa and his two brothers the Minister of Defence Gotabhaya Rajapaksa and the Minister of Economic Development Basil Rajapaksa, which makes the conditions for journalists even more sensitive; i.e. a journalist supporting one brother could face harassment from the others.

An anonymous media source explained that a reason why the Sri Lankan media are passive is the fact that many owners of newspapers as well as editors are receiving benefits from the government; e.g. children of some editors have gone abroad for education under the government sponsorship.

The anonymous media source also explained that the Tamil press is limited by the absence of Tamil journalists as many of them have left the country. The source further explained that Tamil papers to a large extent had been controlled by LTTE and that it will take time to build up a more independent press. As regards the situation for the Tamil press, the source mentioned that to some extent, there is less intimidation on the Tamil media since the government reads only Sinhalese. Tamil press, however, is strictly adhering to self-censorship, even after the completion of the war in 2009 since they still fear of the remnants of the LTTE. It seems they are still suffering from a

cultural shock of the unexpected defeat of the LTTE. At the same time they still fear the state military structure, which could impose strict legal barriers against them with Tiger labelling.

### **V. 3. 1 Cases on journalists targeted**

The EU delegation stated that although the government has released the well known journalist Tissainayagam, there are still reports of formal arrests of journalists. In this connection, the EU delegation pointed at the arrest of journalists employed by the private Sinhala television media, MTV, who during the election campaign had expressed themselves critically and in favour of the opposition's candidate.

The Director of the anonymous local NGO stated that the most independent journalists have either been killed or were harassed and had left the country. The result is a sub-missive media and no free press. The Director mentioned the case regarding the journalist who published in North Eastern Monthly **Tissanayagam** who was suspected of supporting LTTE and who was convicted for 20 years and branded as LTTE regardless the fact that he was not an LTTE member. When the journalist was released by a presidential pardon due to international pressure, he left the country immediately (January 2010).

The anonymous journalist as well as the anonymous media source pointed at another example on persecution of media people by mentioning the journalist of the website, "Lanka e-news", **Mr. Prageeth Eknaligoda**, a critical Sinhala journalist who was abducted two days before the presidential elections and has been missing since January 2010. Mr. Prageeth had been reporting very critically of the government and in support of the main opposition candidate at the January presidential election campaign.

A third example was given by the anonymous journalist who pointed out a case on how no critical journalist is safe. **Mr. Lasantha Wickrematunga, the editor of Sri Lanka's The Sunday Leader**, reported critically on the conflict because he was high profile and had a personal relationship with the president. Mr. Wickrematunga was shot dead on 8 January 2009.

A fourth example was mentioned by an anonymous media source who referred to the case on the Associate Editor of "the Nation" **Mr. Keith Noyahr**, who was abducted and tortured in 2008 after reporting critically on the conduct of an army commander. When released, Mr. Noyahr fled abroad and never returned to the country.

A fifth example was given by the anonymous journalist who mentioned that the **Director of the College of Journalism** recently had been questioned about training of Tamils. The same director was in 2007 interrogated by the TID in connection with the arrest of a student at the college. The student had been detained as a suspect of being a member of the LTTE under the PTA.

A sixth example was given by the anonymous media source who mentioned the attack on the radio/print journalist, **Mr. Namal Perera** from the Sri Lanka Press Institute (SLPI), who was attacked and attempted abducted when he was on his way home in July 2008. He, too, has been critical of the then army commander in his previous writings. Several weeks before the Mr. Namal Perera incident, the SLPI took legal action against the state-controlled *Dinamina* newspaper for reporting that the SLPI had sent members of the LTTE on a foreign tour to Denmark on the pretext that they were journalists. According to the source, this was one example of instigating hate speech by the state-media against the independent press.



## VI Legal Safeguards

Deputy Solicitor General Shavinda Fernando stated that once the threat from LTTE had decreased some provisions in the Emergency Regulations (ER) have been relaxed in May 2010. The Deputy Solicitor General further stated that there are still residual effects of the LTTE which have to be eliminated, including ammunition and land mines. Once the national security is assured the Emergency Regulations will be relaxed over time. For the moment the security of people is adequately safeguarded by the present regulations and if the positive development continues, and it is assured that the LTTE is successfully defeated, the Sri Lankan government may be able to relax more provisions. However, it remains to be seen what will happen as regards the active LTTE supporters in western countries. The time consuming identification process of the LTTE members is still ongoing, and according to the Deputy Solicitor General there is still intelligence information on active LTTE members in Sri Lanka. He added that the backbone of the LTTE structure had been damaged, but some cells remain dormant, for which reason the government cannot be too relaxed. The Deputy Solicitor General added that the next step for the authorities is to finish the backlog of cases with Tamils arrested. According to the source, there has been a marked increase in the numbers arrested in the North and East by the security forces at the end of the war.

### VI. 1 Conditions for and control of arrests and use of anti-terror legislation

ICRC stated that the level of arrest has decreased dramatically compared to last year. Arrests take place throughout the country and no specific ethnic discrimination is signalled. Those performing the arrests are most often the police. Families are usually informed about detention within the first couple of days. In general, the situation has improved. In Colombo, arrests at checkpoints are also rare and cordon and search operations in Colombo have stopped.

ICRC informed the delegation that the Emergency Regulation (ER) enforced in 2005 was last amended on 2 May 2010.<sup>28</sup>

ICRC also said that the Prevention of Terrorism Act (PTA) is unaffected and still in force. This provides for administrative detention up to 18 months. Under this legislation, there is no requirement for confessions made to senior police officers to be repeated before a magistrate or judge. Confessions and statements are often taken down by the police in Sinhala, a language which many Tamils do not speak or read.

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<sup>28</sup> ICRC emphasized the following amendments:

- An individual who, in the opinion of the Secretary to the Minister of Defence, threatens national security or public order can be detained without charge for up to three months (in the emergency regulation of 2005 the maximum period of detention was 1 year).
- An individual who is detained under the Emergency Regulation "shall" be produced before a magistrate not later than thirty days after the arrest.
- The confession of an individual who has breached the Emergency Regulations can make a valid confession only to a Magistrate. (In the Emergency Regulation of 2005 a confession before a police officer would also be valid)

Reference is made to latest amendments to the Emergency Regulations available in Refworld:  
<http://www.unhcr.org/refworld/country.LEGAL...LKA...4bf11e222.0.html>

ICRC explained that the Emergency Regulations are widely used for initial arrests and detention, and that detention can be continued under the PTA. In addition, ICRC informed the delegation that it is mainly the police who perform arrest; the military can arrest people under the Emergency Regulations but they cannot arrest people under the PTA. Overall, around 2,000 are currently detained under the EMR and PTA.

The spokesperson from the British High Commission said that the judiciary is not functioning. Detainees stay in prison for long periods most often under the Emergency Regulations or the PTA without being charged with any offences. In cases that actually are taken to court, there is only a 4 percent successful prosecution rate. One of the reasons is that the judges usually point out a mistake in procedures made by the police, for which reason the case is dismissed.

The Norwegian Embassy similarly mentioned that only 4% of arrests end up with a court case, whereas 96% of all cases (including criminal cases) are dismissed in courts. People may be arrested and held for years without charges filed. Under the Prevention of Terrorism Act people may be held for extended periods and up to 180 days before the case is brought up in the courts. Many of these cases are finally dismissed in the courts, which imply that the suspicion towards the defendant remains. In addition, the police do not issue documentation for the arrest, which means that the families are not informed. The Norwegian Embassy further mentioned that arrests today seem more politically than ethnically motivated.

Amongst issues relevant to the legal safeguards in Sri Lanka, a leading human rights defender in Sri Lanka mentioned the huge backlog of cases in the court system, which implicates a long protracted process for the detainees. Suspects will be held in detention in extended periods on limited evidence, and there is no provision for a “fast track” procedure.

A diplomatic mission explained that the judiciary in general is much politicised. The diplomatic mission further emphasized that anti-terror legislation is still used to keep people in preventive detention. The Emergency Regulations have been softened recently (in May 2010) with a maximum period of 3 months administrative detention, but the PTA is still in force and may keep people in preventive detention up to one year. In this connection a diplomatic mission also referred to the 8-9000 LTTE-cadres who had been screened out to the rehabilitation camps (reference is made to chapter I. 2. 1 for more information on former LTTE members and supporters). They are still in a legal limbo and it is unclear whether these people will be considered as surrendees under the Emergency Regulations or if they signed a surrender statement.

An official attached to a local Human Rights organisation commented with regard to the LTTE cadres in the rehabilitations camps that there is an extra judicial framework for LTTE cadres and that they are detained without a detention order. According to the official, the profiles of LTTE cadres who will be prosecuted are the mid-level cadres of which there is a caseload of approximately 800. Some of the high level LTTE members are now working with the government and will not be prosecuted.

The Co-ordinator of Law and Society Trust pointed at the many Tamils who have been arrested throughout the country and taken into custody during the conflict. He had personally met and heard testimonies of Tamils that have been detained for 10-15 years and some were tortured badly. Some of those tortured and detained have been released after some months with no evidence being presented against them.

Ms. Kishali Pinto-Jayawardene, who is a human rights lawyer and works as a senior consultant at the Law & Society Trust, pointed out that theoretically the legal safeguards are guaranteed in the Sri Lankan Constitution and the Sri Lankan laws. According to the constitutional rights, there is a guarantee against arbitrary arrest and torture. However, Emergency laws have undermined much of these safeguards. In this connection, Ms. Kishali Pinto Jayawardene emphasized the automatic extension of detention up to 18 months under the Prevention of Terrorism Act, the lack of access by a suspect to independent legal counsel and the lack of access to an independent medical examination in connection with the prevalence of practices of torture. Ms. Kishali Pinto-Jayawardene stated that normal criminal procedure is not ordinarily resorted to Sri Lanka, as the police is using the Emergency Regulations, which provide the authorities with wide ranging power, not only in connection with suspects of terrorism but also in connection with common thieves. Ms. Kishali Pinto-Jayawardene stated that the level of arrests, and in particular arbitrary arrests, in general has declined for terrorist suspects (Tamils) after the ending of the war.

Ms. Kishali Pinto-Jayawardene further stated that, in an increasing number of cases, the police fabricate charges against suspects. This has become part of the judicial environment and there is little accountability on the part of the police. Ms. Kishali Pinto-Jayawardene commented that although the Emergency Regulations have been reduced in certain aspects in May 2010, the police do not act differently. Resorting to abuse instead of systemic investigation has become part of the normal routine.

When asked about the lifting of the Emergency Regulations, the Executive Director of the National Peace Council stated that the government says that 70% of ER has been lifted, but people do not feel it. The Executive Director of the National Peace Council further noted that what counts is not what is on paper, and that in practice no changes have taken place.

The Director of the anonymous local NGO stated that the judiciary used to be independent, but that this is not the case anymore. The public has lost confidence in the judiciary under the previous Chief Justice, who made arbitrary decisions. The Director further referred to examples of transfer of independent Tamil Magistrates from Jaffna, Kilinochchi and Vavuniya. (Reference is made to chapter I.2.3.2 for more information on the human rights situation in the North).

An official attached to a local Human Rights organisation said that there are no fair trails and no independent judiciary in Sri Lanka, since the judges depend on the government. The deterioration of the judiciary started in 2007. Lawyers dealing with Human Rights cases will not get into trouble as long as the cases are low profile; but if the cases are high profile a lawyer can get into trouble.

The Executive Director of the National Peace Council mentioned that the government is interfering in the judiciary. The Executive Director referred to the case of the journalist Tissanayagam, which according to the NPC was decided with a clear bias. (Reference is made to chapter 5 Freedom of Expression) Among other issues relevant to the legal safeguards in Sri Lanka, the Executive Director pointed out that there is in practice a culture of impunity, whether it is for government members and politicians who abuse their powers or for soldiers who commit violence, as hardly anyone who abuses their powers is dealt with according to the law.

Similarly, an anonymous source stated that there is no independent judiciary in Sri Lanka. The Attorney General's office has come under the President's Office and the judges are under pressure

to exercise their power in accordance with government policy<sup>29</sup>. The anonymous source said that magistrates who work independently are transferred to other areas.

The source also pointed at the lack of international ruling of the courts as Sri Lanka does not implement the International Covenant on Civil and Political Rights, the Convention against Torture and the Convention on the Rights of the Child.

### **VI. 2 Access to basic legal rights and availability of legal assistance**

ICRC informed the delegation that under the normal criminal law, the accused will have access to a legal advisor. In general, Legal Aid is available, but often the detainee will not be aware of the possibility of legal aid and does not have the resources to access a lawyer. Moreover, persons administratively detained under the Emergency Regulation or the PTA do not have access to legal counsel, and even for those who succeed to get a lawyer there is no effective legal remedy (a *habeas corpus*<sup>30</sup> case may be filed in the higher courts; however, this legal remedy is not effective since the processing time of the petition is long).

The Norwegian Embassy similarly mentioned that lawyers have not been very successful in filing so called “habeas corpus” cases to the courts. Consequently, detainees remain in custody for long periods without knowing the charges against them. The embassy added that Sri Lanka never signed the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).

The Norwegian Embassy informed the delegation, that in areas where ICRC has got access, legal assistance may be provided to the detainee, but often the detainees might not have the resources or do not know about their rights.

The Director of the anonymous local NGO similarly stated that, in general, there is access to legal assistance, however, many detainees and especially detainees under the PTA are held for a long period before they get access to a lawyer.

Ms. Kishali Pinto-Jayawardene informed the delegation that the availability of legal assistance to suspects would depend on the nature of their political contacts and not on legal norms. According to Ms. Kishali Pinto-Jayawardene, people in the South would not normally go through the police or the court system, if they have a case. Ms. Kishali Pinto-Jayawardene found that people would more often seek assistance with local politicians. Ms. Kishali Pinto-Jayawardene explained that one reason for this is the lack of control of sub-officers by superior police officers as police officers erode their authority. Ms. Kishali Pinto-Jayawardene further mentioned that as the Department of the Police is under the Ministry of Defence and the National Police Commission is non-functioning at present, there is nobody to independently address any complaints on police officers. (As regards the possibility to seek protection in North and East, reference is made to chapter I. 1. 7 and III. 1. 4).

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<sup>29</sup> Reference is also made to International Crisis Group, *Sri Lanka's Judiciary: Politicised Courts, Compromise Rights*, Asia Report No 172, 30 June 2009.

[http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/172\\_sri\\_lankas\\_judiciary\\_politicised\\_courts\\_compromised\\_rights.ashx](http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/172_sri_lankas_judiciary_politicised_courts_compromised_rights.ashx)

<sup>30</sup> *Habeas Corpus: Writ of habeas corpus is a writ ordering a prisoner to be brought before a judge*. Princeton University, <http://worldnetweb.princeton.edu/perl/webwn?s=habeas%20corpus> [the writ is also used to demand police/armed forces accountability in relation to missing persons]

A leading human rights defender in Sri Lanka pointed at the vulnerable situation of the defence lawyers in human rights cases, who risk to be exposed as “traitors”. Although the laws provide for legal defence, courts are not independent but operate “executive friendly”, officially to provide for national security.

### **VI. 2. 1 Human Rights Commission (HCR)**

Deputy Solicitor General Shavinda Fernando informed the delegation that the commission for the time being is not functioning due to the fact that new commissioners were not appointed.

Appointment of new commissioners will await the functioning of the Constitutional Council. ICRC informed the delegation that the HRC offices still receive complaints on arrest, but that the commission has questionable legal authority, as no commissioners have been appointed to the commission.

The Norwegian Embassy similarly explained that the commission is dysfunctioning at the moment as the commission has neither an approved mandate nor appointed commissioners. Local offices of the Human Rights Commission in the East and North still receive complaints by citizens who report to them and these complaints are forwarded to the head office in Colombo, but no action is taken.

The spokesperson from the British High Commission similarly mentioned that the National Human Rights Commission is not functioning and has no power to deal with cases.

As regards the possibility of reporting incidents to Human Rights Commission (HRC), a diplomatic mission said that HRC is “now dying a natural death” as there are no chairman and no commissioners appointed to the committee.

An anonymous source informed the delegation, that there is no independent body to do monitoring of human rights in Sri Lanka. No commissioners have been appointed to the National Human Rights Commission and there is no public representation or individual monitoring done by the commission. Some regional officers of the NHRC still follow up on receipts of arrests when people address them regarding family members who have disappeared, but at the central level the commission is not functioning.

### **VI. 3 Occurrence of physical abuse/torture**

Deputy Solicitor General Shavinda Fernando mentioned that there were very few cases of complaint of torture. Compared to the numbers of arrests, the torture cases would represent less than 0,003%. Commenting on the reports of the UN Special Rapporteur, Manfred Novak, the Deputy Solicitor General said that torture is not a state pattern in Sri Lanka nor is there a systematic practice of torture. Officers involved in torture are prosecuted. However, the minimum sentence for torture is seven years according to the Torture Act, which according to the Deputy Solicitor General may not be justified for minor offences such as slaps.

Deputy Solicitor General Shavinda Fernando commented that there are excesses by many officers down the line – mainly in the police force not the army – but many of these cases are petty cases which will not be prosecuted. The Deputy Solicitor General added that the authorities are also training and educating the police officers in order to prevent torture, as the government is following a zero-tolerance policy of torture. The Deputy Solicitor General further explained that under the PTA and ER confessions made to a police officer above a certain rank will be accepted. However, if there is the slightest doubt about the voluntariness of the confession the case will be dismissed.



According to the Deputy Solicitor General there is a strict process for scrutinizing these confessions by court before a confession is admitted as evidence.

Concerning submission of cases on violation of fundamental human rights, Deputy Solicitor General Shavinda Fernando explained that Sri Lanka is not a very resourceful country and that only a small unit within his office is dealing with such cases, which for the time being includes five staff members, but only four staff take the cases to the Supreme Court.<sup>31</sup>

A diplomatic mission commented that torture in the law enforcement system is widely used and documented, but there are only rare cases of prosecution. In general, impunity for the ones who committed torture is a major issue. The diplomatic mission also commented that the poorest people are more vulnerable to (severe) torture and less likely to take successful legal action against torture.

A leading human rights defender in Sri Lanka stated that torture is a fairly regular practice in Sri Lanka, which is not specifically ethnic but related to the conflict in general. In this connection, the source further referred to the reports of the UN rapporteur on torture, Manfred Novak, who has reported on the systematic use of torture in Sri Lanka.<sup>32</sup>

Regarding torture, the Norwegian Embassy similarly referred to the report of UN rapporteur on torture, Manfred Novak who has reported on the systematic use of torture in Sri Lanka.

When asked about the level of torture, the Director of the anonymous local NGO informed the delegation that it is well documented that confessions are very often obtained under torture also when it comes to minor crimes. Torture takes place in police custody as well as by TID, in Boosa detention centre and Galle Prison.

Ms. Kishali Pinto-Jayawardene said that the Emergency laws have resulted in the legal mindset of law enforcement officers in Sri Lanka being inclined towards frequent keeping of people in remand without judicial scrutiny and the use of torture to obtain confessions. Ms. Kishali Pinto-Jayawardene mentioned that the use of torture is well documented in Sri Lanka and referred to the reports of the Asian Human Rights Commission in this regard.<sup>33</sup>

An official attached to a local Human Rights organisation similarly informed the delegation that very often torture takes place right after arrest. Torture occurs in LTTE cases as well as other cases.

### VI. 4 Official and unofficial detention centers

According to a diplomatic mission and the spokesperson from the British High Commission there are still reports of some unofficial detention centres: In this connection they both pointed at some of

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<sup>31</sup> The Deputy Solicitor General explained that the case load since 2007 until July 2010 was 530 opened cases, 142 pending cases and 113 cases in which decision was not taken. Deputy Solicitor General Shavinda Fernando further expressed that there is a lack of Tamil translators for the work, which creates bottlenecks. Deputy Solicitor General commented that a large number of these cases are taken to the Supreme Court to expedite the case in order to get a release of the detainee. In fact, extremely few cases end up with a judgement, as most cases are subsequently withdrawn.

<sup>32</sup> UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak - Addendum*, A/HRC/13/39/Add.6, 26 February 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-39.pdf>

<sup>33</sup> For more information refer to the web page of the Asian Human Rights Commission, [http://srilankahr.net/modules.php?name=Content&pa=list\\_pages\\_categories&cid=36](http://srilankahr.net/modules.php?name=Content&pa=list_pages_categories&cid=36)



the non-gazetted centres where the 8-9,000 alleged ex-combatants are detained and kept in detention without a legal basis.

The Norwegian Embassy also mentioned reports of unofficial detention centres, but said that today the target group for interrogation by police, TID or the military seem to be political opponents rather than ethnic groups.

Ms. Kishali Pinto-Jayawardene said that places of detention are either regular police stations or other places authorized by the Inspector General of the Police. Ms. Kishali Pinto-Jayawardene did not have any information on the current number of unofficial detention centres.

The Co-ordinator of Law and Society Trust mentioned that he does not have any general information on unofficial detention centres, but that he has knowledge they exist. For example, the Co-ordinator of Law and Society Trust has seen and has on file a copy of a letter from a man who is allegedly kept in an unofficial detention centre. The letter was dated 1 February 2010 and was originally secretly send to his wife.

### **VI. 5 Disappearances**

A diplomatic mission informed the delegation that compared to the previous two years, disappearances and “white van abductions” of suspected LTTE supporters (mostly young Tamil men) have significantly decreased. The few disappearance and abduction cases that are currently being reported appear to be more of a criminal rather than political nature. Meanwhile, no reliable information is available on persons who went missing during the final stages or in the immediate aftermath of the war in the Vanni. The same source added that a high-profile disappearance was reported in January 2010, when journalist Prageeth Eknaligoda went missing. (Reference is made to chapter V Freedom of expression)

The Norwegian Embassy mentioned that disappearances may still occur in relation to political opponents.

The Director of the anonymous local NGO stated that the number of abductions and disappearances has decreased regardless the fact that many cases are not reported. Before the end of the war abductions and disappearances undertaken by paramilitary groups were related to LTTE suspicion and backed by the police and the TID. At present it is no longer politically but economically motivated, and still mostly performed by paramilitary groups and mainly in the North. (Reference is made to chapter I. 1.6 as regards paramilitary groups in the North).

## **VII Situation for Tamils who have returned/have been returned from abroad**

### **VII. 1 Entering procedures at Colombo airport, including security measures**

As regards, the authorities' entering procedures for returnees, including returned failed asylum seekers in the Colombo Airport, Mr. W. A. Chulananda Perera, Acting Controller General, Department of Immigration and Emigration (DIE) explained that the returnee can enter the Sri Lankan border with either a national passport or an Emergency Travel Document issued by the Sri Lankan Embassy. If the returnee enters with a national passport, DIE can check the data in a database. Entry with an Emergency Travel Document does not give this possibility. However, an Emergency Travel Document is considered a proof of identity established in the country of departure. DIE registers the details of all returnee, including travel documents, flight numbers and country of return in a register that all law enforcement agencies are given access to.

Mr. Perera said that if an Emergency Travel Document is issued, the Sri Lankan Embassy in the returning country informs DIE about the arrival. DIE questions the returnee about the reason for leaving the country, as well as they clarify citizenship and identity. DIE also checks if the returnee is on a list of wanted persons for court orders, forged documentation etc. If it is the case the deportee is handed over to Criminal Investigation Department (CID).

Mr. Perera further explained that all returnees who returned with an Emergency Travel Document will also be questioned by the State Intelligence Service (SIS). In case a returnee is on a list of wanted persons for terrorism then the person is handed over to Terrorist Investigation Department (TID) for further investigation.

A spokesperson from the British High Commission stated that if a returnee arrived from abroad holding their original Sri Lankan passport, were not escorted and at the same time the Sri Lankan authorities had not been notified, the returnee will in most cases go through the airport control without further investigation. If the returnee is escorted, they will be handed to the DIE who will confirm the nationality of the returnee in their database. The DIE database contains details of wanted persons. If the returnee is on the alert list, he will be passed to the department who circulated the alert. This may be DIE or SIS or if it was the police or Courts, they would be passed to CID.

A diplomatic mission similarly mentioned that the Sri Lankan authorities have a list of wanted people and if the returnee is not on this list, the person will in general be allowed entry to Sri Lanka.

A returnee who holds an Emergency Travel Document would not face particular difficulties in entering Sri Lanka according to the diplomatic mission.

Two sources (the spokesperson from the British High Commission and IOM<sup>34</sup>) further explained

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<sup>34</sup> IOM is implementing a programme with Assisted Voluntary Return to Sri Lanka since 2003 and has in the period 2003 to 2009 assisted 2,255 voluntary returnees, including failed asylum seekers, irregular and stranded migrants from UK, EU, Australia, and countries of transit. The largest group of returnees comes from UK. In 2010 (Jan-Apr) IOM assisted 139 out of which 79 came from the UK. The programme includes return and reintegration support. Under the reintegration supports, provision of self-employment/establishment of small and medium scale business are carried out. In addition, vocational training, referral for employment are carried out. The engagement with returnees goes beyond 12

that in the case of a returnee holding an Emergency Travel Document, it is not possible to check the nationality in DIE's database. The person will be questioned by DIE in order to confirm nationality and identity. SIS will then question the returnee on how they left Sri Lanka and what he or she was doing in the country of departure. The returnee will then be passed to CID who will make checks with the police central records office in Colombo and with the local police in the area of origin. In addition, once CID has instigated their checks their procedure is to hand the returnee to a surety. This is usually a close relative or friend who will attend the airport, provide their details to CID and sign for the returnee to be handed over to them. This enables CID to have a point of contact should they wish to contact the returnee again. In case a returnee is on a list of wanted persons for terrorism then the person is handed over to TID for further investigation.

Asked about the duration of the questioning, the spokesperson from the British High Commission gave an estimation of 6 to 8 hours as the maximum. Previously it took longer time to investigate cases from North and East but this was no longer the case.

The spokesperson from the British High Commission had not heard of returnees who were picked up by the police or the intelligence service after their entry to Sri Lanka.

The Norwegian Embassy informed the delegation that Norway does not have a formal monitoring of returned asylum seekers, but since 2008 there have been no reports of any people being detained for longer periods or any other problems related to entering procedures at the airport. Tamils are from time to time returned from Norway without a passport, on their National Identity Cards and escorted by the police.

### **VII. 2 Profile of groups at risk of detention**

Asked about the profile of groups who could be screened out for further investigation, IOM replied that there is no particular profile and that Sri Lankans travelling on Emergency Travel Documents, could undergo additional questioning. Sri Lankan nationals who travelled abroad on false documents as well as irregular immigrants will be screened out for questioning by CID upon their return. The procedure has within the last year become more relaxed, but checking is still ongoing. Most of the returnees end the interviewing process within 2-3 hours.

A diplomatic mission said that the vast majority of Tamils returning at the moment are facing a minimal risk for undergoing a scrutiny at the airport. The source commented that the way people will be screened today seem to be the result of improved intelligence, also exchange of intelligence between countries in Asia. People with a clear LTTE-profile or people suspected of money transfer would be detained for further investigations. According to the source there is in general no difference in the way Tamil and Sinhalese people are treated at the airport, and there are also examples of Sinhalese human rights defenders who have been detained for investigations.

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months period in many programmes with a component of monitoring of returnees up to 12 months carried out. IOM is not involved in any forced returns. However, a few times over the last years, IOM provided transportation to home and basic assistance to forcibly returnees well after the repatriation took place, taking over these cases from the sending Government officials after the clearance of the Sri Lankan customs and the airport authorities.

UNHCR informed the delegation that the organisation is not technically involved in any monitoring of non-refugee returnees from abroad. UNHCR monitored refugee returnees including the approximately 750 who had voluntarily repatriated from India with UNHCR assistance this year. Some of these returned refugees who are met at the airport by UNHCR had undergone questioning at the airport, including questioning by CID, but there had been no incidents of detention.

## VIII ID Cards

### VIII. 1 Returned asylum seekers

The Norwegian embassy informed the delegation that for a returnee who had lost his/her NIC it would not be a problem to obtain a new one. The application for a new NIC can be based on his/her birth certificate and the ETD travel document. If the returnee has lost his/her birth certificate a new copy can be obtained from the Department of the Registrar General in Colombo which is the central registry for all documents.

IOM informed the delegation that returnees who apply for a substitute NIC will have to be verified by the Grama Sevaka/ Niladhari (local registrar) in their place of origin. If the returnees have not stayed in the area within the last 12 months, or if the Grama Sevaka would be a new person, family members, relatives and friends known to the returnee would be able to assist in providing evidence to the Grama Sevaka. It would normally take 6 months to obtain a NIC. In the meantime, the returnee would be able to identify himself on the basis of his Emergency Travel Document and/or his birth certificate. If the returnee has a driving license, he/she would already be registered in the system and the process to get a new NIC would be easier.<sup>35</sup>

The spokesman from the British High Commission mentioned that returnees from abroad are able to obtain a new/replacement NIC. The returnee should obtain a copy birth certificate from the Grama Sevaka in their area of origin or through the central registry in Colombo, and must also obtain confirmation of residence from their Grama Sevaka. The spokesperson from the British High Commission informed the delegation that in general, local records have been maintained during the war.

### VIII. 2 IDPs

The Norwegian Embassy informed the delegation that the government service in Jaffna is working and IDP's returned to Jaffna would not have a problem to obtain ID documentation. In the newly resettled areas in the Vanni, the local administration has changed, and it has been an issue to obtain various certificates.

An anonymous source stated that for people who stayed in the ordinary IDP camps there would not be any legal or other consequences after being released and resettled from the camp. The source however stated that many former IDP's have to wait for long to have their ID documents issued.

#### VIII. 2. 1 Tamils registered in the camps (Menik Farms)

The Norwegian Refugee Council (NRC) said that the need for identity documents continues to be acute, particularly in the North. NRC recently conducted a survey in Menik Farms of documentation needs of Vanni IDPs: 64% of respondents did not have birth certificates and 43% of respondents did not have National Identity Cards.

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<sup>35</sup> More info on the ID issue procedure can be obtained from the website of Department of Registration of Persons <http://www.rpd.gov.lk/> (Government Information Centre)

The Norwegian embassy informed that the IDP's in the camps are registered by the local government and the military administration in the camp.

As regards possible future consequences, UNHCR informed the delegation that the returnees were de-registered from the camps in order to receive the shelter grant in the return areas. This is not always the case though for IDP's living with host families.

*For information on ID documentation for the former LTTE cadres released from the rehabilitation camps, please refer to I. 2. 2. 6.*

### **VIII. 3 Death certificates**

During the fact finding mission some sources raised the issue of death certificates as an issue of concern.

The Norwegian Embassy explained that it is generally estimated that 90% of the documents archives with the local administration in the war zones are intact. However, the source mentioned that in the last phase of the war, there was no registration and especially death certificates could be difficult to obtain. In this connection, the embassy mentioned that issuing of death certificates could also indicate a counting of deaths which could make it more difficult to have them issued.

The NRC said that the issuance of death certificates continues to be an issue of concern. Death certificates are necessary in order for relatives to claim inheritance and to become eligible for some forms of government assistance. The *Births and Deaths Act* governs the issuance of death certificates. For cases of sudden deaths (as is the case for most conflict related deaths), a coroner's report has to be filed before a certificate can be issued. However, there were no coroners present in the North during the last stages of conflict. People needing to obtain a death certificate therefore have to resort to a court declaration if death was witnessed. Such cases can take years to complete.



## **Organisations, authorities and persons consulted**

### **Sri Lankan authorities**

#### **Department of Immigration and Emigration (DIE), Mr. Chulananda Perera, Acting Controller General**

DIE is a body under the Ministry of Defence since the latest election in April 2010 / 11 March 2010. Formerly, DIE was a body under the Ministry of Internal Administration

#### **Attorney General's Department, Mr. Sharvinda Fernando, Deputy Solicitor General**

The Attorney General's Department was previously a body under the Ministry of Justice but was since the last election in April 2010 transferred to the President's Office.

### **Diplomatic missions**

#### **Royal Norwegian Embassy, Mr. Trygve Guntvedt, First Secretary**

#### **A spokesperson from the British High Commission**

#### **A diplomatic mission**

#### **Delegation of European Union, Mr. Vandenberghe, Charge d'Affairs and Ms. Soira Benedict, Programme Manager**

### **International organisations**

#### **United Nations High Commission for Refugees (UNHCR), Mr. Gregory Alan Balke, Senior Protection Officer and Ms. Menique Amarasinghe Assistant Protection Officer**

#### **United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), Ms. Zola Dowell, Head of Office**

#### **United Nations Children's Fund (UNICEF), Mr. Philippe Duamelle, Country Representative**

#### **International Organisation for Migration (IOM), Ms. Lorena Lando, Senior Programme Manager, Mr. Giuseppe Loprete, Donor Liason Officer and Programme Manager, AVR-unit Priyyantha Kulathunga**

#### **An international organisation working in the North**

### **International non-governmental organisations (INGO)**

#### **Norwegian Refugee Council (NRC)**

#### **International Committee of the Red Cross (ICRC)**

### **Local non-governmental organisations (NGO)**

#### **Law & Society Trust (LST), Mr. Ruki Fernando, Co-ordinator**

LST is a not for profit organisation conducting human rights documentation, research and advocacy based in Colombo, Sri Lanka. The programme areas include Civil and Political Rights; Economic, Social and Cultural Rights and Human Rights in Conflict. The mandate of LST combines research, lobbying, awareness raising, training and networking as strategies and campaigns at the national and regional level on a variety of issues which fall within its mandate.

#### **National Peace Council (NPC) of Sri Lanka, Dr. Jehan Perera, Executive Director**

NPC is an independent and impartial non-governmental organisation that has worked towards a peaceful Sri Lanka since 1995. The mandate is to support its activities of advocacy, research, training, mobilization and dialogue, which are aimed at mobilizing the people towards peace and conflict transformation.

#### **Ms. Kishali Pinto-Jayawardena, Human Rights Advocate, Media Columnist, Legal Consultant, Law and Society Trust (LST)**

Ms. Kishali Pinto-Jayawardena writes on human rights issues in the Colombo based The Sunday Times. Ms. Pinto-Jayawardena is also the Deputy Director and Head-Civil & Political Rights Programme of LST and the editor of LST Review.

Ms. Pinto-Jayawardena has collected, analyzed and published the report “The Rule of Law in Decline in Sri Lanka” on human rights conditions in Sri Lanka supported by the Danish Rehabilitation and Research Centre for Torture Victims (RCT). The conclusions of the report were presented at the meeting of the UN Human Rights Council in Geneva on 12 September 2009.

#### **An anonymous local NGO**

#### **An official attached to a human rights organisation**

### **Other sources**

#### **A leading human rights defender in Sri Lanka**

#### **An anonymous media source**

#### **An anonymous journalist**

#### **An anonymous source**

## Annexes

### Annex 1 Terms of reference for the fact-finding mission to Sri Lanka

- I. Situation for Tamils who have returned/have been returned from abroad
  1. Entering procedures at Colombo airport, including security measures
    - Profile of groups at risk of detention ( (presumed) members, ex-fighters and supporters of the LTTE, family members to Tamils who have been affiliated with the LTTE, Tamils never affiliated with the LTTE)
    - Importance of geographical origin (North, East, Colombo)
- II. Situation for Tamils in the North
  1. Security
    - Cessation of the hostilities and role of remaining scattered groups of LTTE (if any?)
    - Situation for people who was previously in conflict with LTTE
    - The role of the pro-government paramilitary groups (EPDP, PLOTE, TELO, EPRLF)
    - Situation for members, ex-fighters and supporters of LTTE
    - Situation for family members to Tamils who have been affiliated with LTTE
    - Situation for Tamils who were never affiliated with the LTTE
    - Situation for returnees
  2. Human Rights Situation
    - Rehabilitation of former LTTE-cadres
    - Situation in the camps:
      - Are human rights violations taking place and in the affirmative, kinds and extent of the mistreatment, who are the perpetrators and is it possible to obtain protection
      - Number and categories of persons still in the camps
      - Categories of persons released from the camps. Future prospects and plans for further release of persons with specific needs/ others?
      - General living conditions for Tamils in the camps, including access to employment/ schools

- Family separations and possibilities for reuniting with family members outside the camps, including possibilities for investigating family members of unaccompanied minor asylum seekers
- Legal consequences for Tamils who stayed in the camps, including consequences of registration in the camps
- Human rights situation for Tamils in the Northern provinces (outside the camps)

### III. Situation for Tamils in Colombo (temporary, permanent and returnees)

#### 1. Security situation in Colombo

- Registration requirements for Tamils resident in Colombo
- Checkpoints and other checks (round-ups) on Tamils resident in Colombo
- Tamils' risk of arrest while in Colombo
- Tamils from the North in Colombo and their risk of arrest or mistreatment

#### 2. General Human Rights Situation in Colombo

- Living Conditions for Tamils in Colombo
- Educational and employment opportunities for Tamils in Colombo
- Status of Tamil lodges in Colombo

### IV. Situation for Tamils in the East

#### 1. Security

- Role of remaining scattered groups of LTTE (if any?)
- Presence and role of paramilitary groups (including TELO, TMVP factions (Pillaiyan) and former TMVP (Karuna) cadres) and their cooperation with government, government forces, local authorities
- Situation for people previously in conflict with LTTE
- Situation for members, ex-fighters and supporters of LTTE
- Situation for family members to Tamils who have been affiliated with LTTE
- Situation for Tamils who were never affiliated with the LTTE
- Situation for Tamils in conflict with or in opposition to the TMVP

- Situation for returnees

2. Human Rights Situation

- Role and acts of local TMVP-cadres or other paramilitary groups, including perpetration of human rights violations and groups targeted
- Possibilities to obtain protection if targeted by TMVP or other paramilitary groups
- Incidence of human rights violations in the IDP camps and possibilities to obtain protection – profile of IDPs who have been resettled
- Future prospects of IDPs and plans to return to their villages of origin

V. Freedom of movement

- Possibilities for Tamils/for other ethnicities of travelling within the North or from the North to Colombo and vice versa
- Limitations, if any, on travelling between other districts in Sri Lanka

VI. Freedom of expression

- Situation for journalists, political activists, and human rights defenders (North and Colombo)

VII. Legal Safeguards

- Conditions for and control of arrests
- Access to basic legal rights and availability of legal assistance
- The occurrence of physical abuse/torture
- Official and unofficial detention centers
- Disappearances
- Use of anti-terror legislation

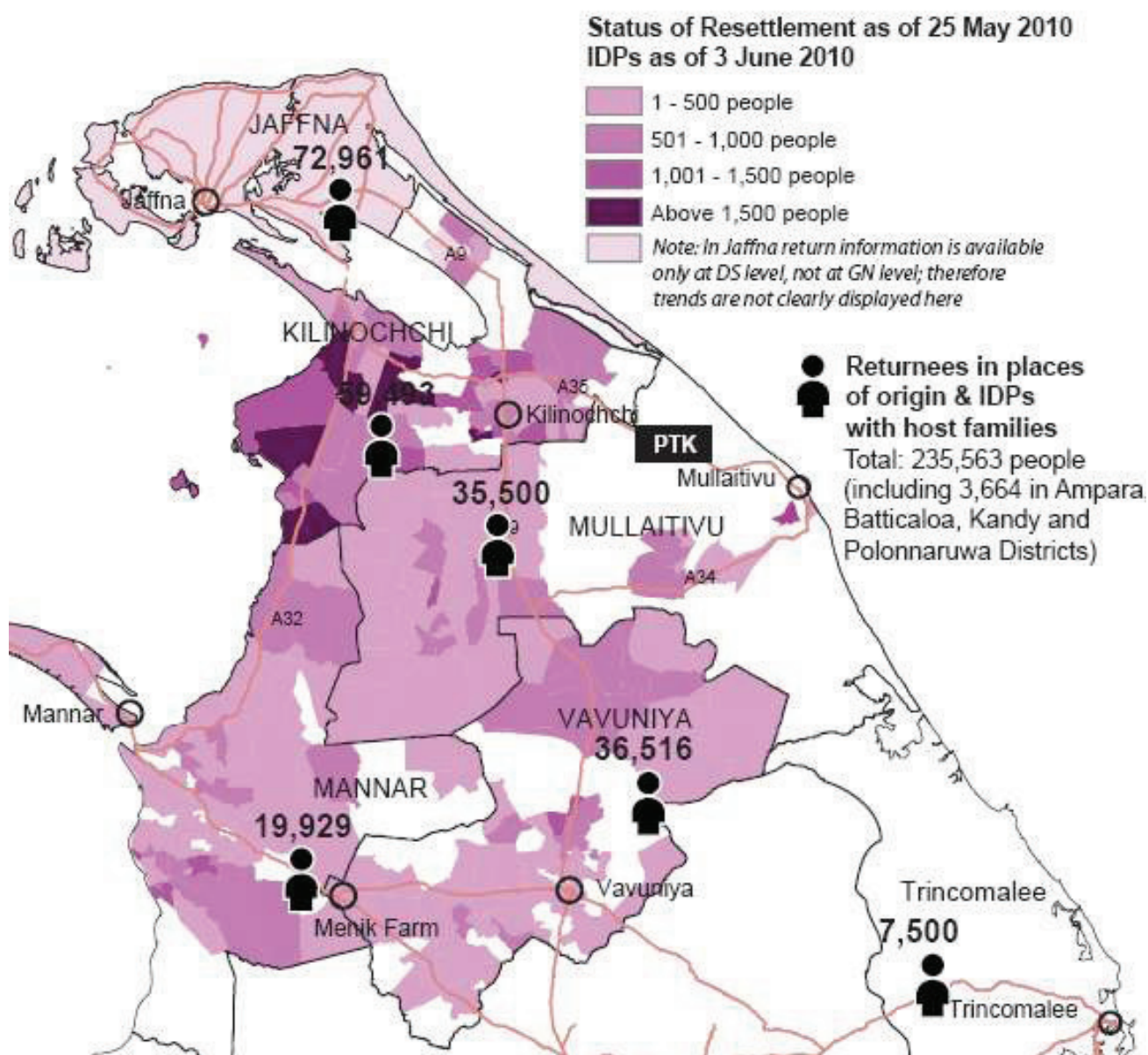
VIII. ID Cards

- Tamils originally from the North
- Tamils originally from the East
- Tamils registered in the camps (Menik Farms)
- Returned asylum seeker





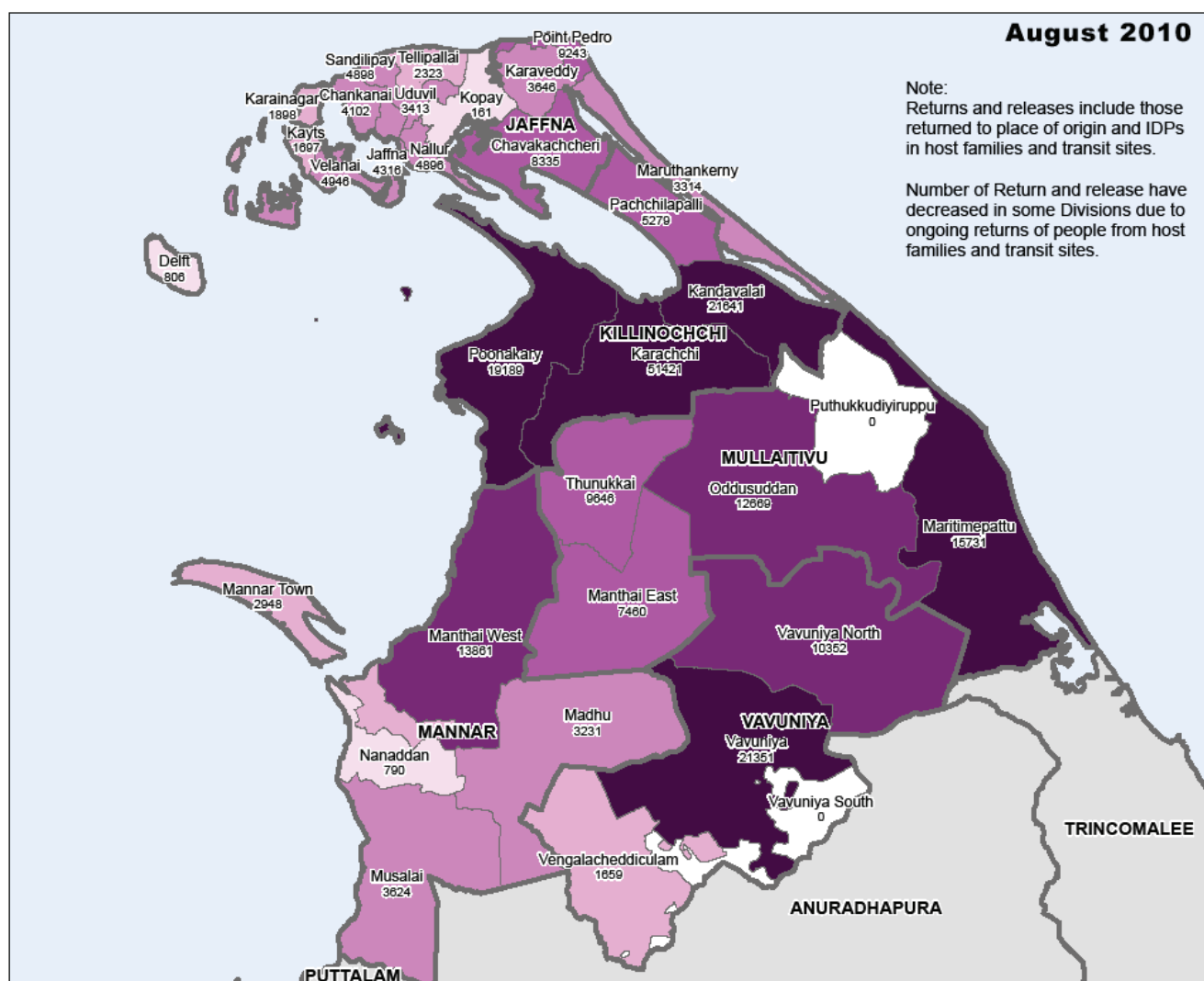
Annex 3 Map of Status of Resettlement as of May 2010



Source: UNOCHA Sri Lanka, *Sri Lanka - Humanitarian Snapshot, Focus Return Areas June 2010*, page 1

[http://www.humanitarianinfo.org/srilanka\\_hpsl/Files/Situation%20Reports/Humanitarian%20Snapshot/LKHS011\\_2010%20June%20Humanitarian%20Snapshot%20Return%20Areas.pdf](http://www.humanitarianinfo.org/srilanka_hpsl/Files/Situation%20Reports/Humanitarian%20Snapshot/LKHS011_2010%20June%20Humanitarian%20Snapshot%20Return%20Areas.pdf)

#### Annex 4 Map of Status of Resettlement as of August 2010



Source: *Refworld: 2010 United Nations Office for the Coordination of Humanitarian Affairs, Sri Lanka*

<http://www.unhcr.org/refworld/country,,,LKA,,4c80ac532,0.html>

**Annex 5    Photos from Vanni & Jaffna**



Buddhist Temple after renovation in the middle of Killinochi town



Arch proclaiming the greatness of Buddhism across the A9 road in Killinochi



Sinhalese signboard announcing a new Sinhalese name for an old Tamil village in the Mankulam – Mullativu road (Reason given by Army Captain: Tamil name is too long and difficult to pronounce)

***Source:** Ruki Fernando, *Life in Vanni & Jaffna in the year after war*, 15<sup>th</sup> May 2010.*

*(Photos taken during visits to Vanni & Jaffna between Nov. 2009 – May 2010)*

*Ref. mail, dated 25.08 2010*

## Annex 6 UNHCR Note on Police Registration in Colombo

### Point Two

*- Footnote 76 of the Eligibility Guidelines says that people moving to Colombo need to register with the local police.*

Section 23 of Emergency Regulation No. 1 of 2005 (13 August 2005) states:

23. Every householder within any area shall furnish the Office-in-charge of the Police Station of his area when required so to do by a Police Officer not below the rank of Assistant superintendent of Police, with a list of all the inmates of his house, distinguishing the members of his family from the servants or other residents therein; [sic] and he shall also if it shall be so directed in the order of the aforesaid Police Officer, report any increase or diminution or change in the same ; and he shall not, having received such notice under such order, harbour a stranger without giving such notice thereof to the Officer-in-Charge of the Police station of his area, and every person failing in any duty imposed upon him by this regulation shall be guilty of an offence.

It is significant that the text of the Emergency Regulation specifies that “every householder” in a defined area is subject to the notification requirement, thus not specifying an application specific to those of Tamil ethnicity.

We have a further citation to an underlying implementing regulation, Section 76 of the Police Ordinance:

76. Every householder within such town and limits shall furnish the officer of police of his division, when required so to do by such officer under the order received to that effect from any Magistrate having jurisdiction within such town and limits, or from the Inspector General of Police, with a list of all the inmates of his house, distinguishing the members of his family from the servants or others resident therein ; and he shall also, if it shall be so directed in the order of the Inspector-General of Police or Magistrate report any increase or diminution, or change in the same ; and he shall not, having received such notice under such order, harbour a stranger without giving such notice thereof to the principal officer of police of his division; and every person failing in any duty imposed upon him by this clause shall be guilty of an offence, and be liable to any fine not exceeding fifty rupees.

Notably again, the text of the regulation speaks of “every” householder in a defined area.

Residents have credibly reported to UNHCR that in mid-July public announcements were made in Tamil language only by mobile loudspeakers in the Wellawata area instructing all Tamils in the area to report to the local police stations for the purpose of registration. Singalese (and Muslims) in the area were not called to register. Media reports have confirmed the campaign in Wellawata, and its application to Tamils. Wellawata is the largest concentration of Tamils in the Colombo metropolitan area.

UNHCR is not aware of similar campaigns elsewhere in the Colombo area, and the registration “requirement” seems not to be applied to Tamils elsewhere in Colombo.

UNHCR has obtained a copy of the registration form utilized by the police. Attached. (Annex 7)

Thus, while registration of residents with local police is authorized by Sri Lankan law, and is arguably not objectionable under international human rights law, the registration requirement is now being applied in a discriminatory fashion exclusively to those of Tamil origin.

UNHCR is aware of at least one advocacy NGO that is considering filing Public Interest Litigation on this matter if they are able to assemble a number of complaints. At this early stage, and without specific survey of this process, we are not aware of any detentions or arrests that have resulted when Tamil persons have presented themselves for registration, but at the same time, the re-start of this registration requirement and its discriminatory application to Tamils only, has produced a deep anxiety amongst persons of Tamil ethnicity in Wellawata.

**Protection Unit**

**UNHCR Colombo**

**2 August 2010**



## Annex 7 Police registration form (reference to Annex 6)

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