248

20/5 99

NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

SRI LANKA (47)

BACKGROUND PAPER

ON

SRI LANKA

FOR THE

EUROPEAN UNION HIGH LEVEL WORKING GROUP ON ASYLUM AND MIGRATION

18 MARCH 1999

TABLE OF CONTENTS

1. Introduction

Ethnic conflict has played a major role in Sri Lanka's post-independence history. For over fifteen years, Sri Lanka has suffered from the consequences of an armed conflict between the government and militant Tamil groups, which has taken its toll on the country as a whole, claiming over 55,000 lives.[1] Tamil aspirations for an independent homeland may be said to have stemmed from a perception that their rights and interests have not been taken into account since the independence of Sri Lanka; such a perception being based on attempts by the majority Sinhalese to reverse what was seen as the excessive influence of Tamils before independence.[2] A series of distinct legislative acts on the part of the Sinhalese-dominated government, soon after independence, had provoked a sense of grievance among the Tamil minority; these acts included, amongst others, the denial of citizenship to the 'up-country' (Indian) Tamils under the Ceylon Citizenship Act of 1948, their disenfranchisement under the Ceylon (Parliamentary Elections) Amendment Act of 1949, the designation of Sinhala as the sole official language of the state under the Official Language Act of 1956, the foremost place accorded to the Buddhist religion under the 1972 Constitution, and the adoption of education policies which tended to favour Sinhalese speaking students.

The first inter-communal riots broke out in 1956 and tension between the Tamil and the Sinhalese population increased significantly in the 1960s and the 1970s; the Tamil population sought to obtain a federal system of government and became alienated when this was refused by successive governments.[3] The 1970s witnessed the ascendancy of Tamil militancy including the formation of the Liberation Tigers of Tamil Eelam (LTTE). Inter-ethnic hostilities culminated in the killing of thirteen Sinhalese soldiers in the North in July 1983 which led to violent retaliatory measures against the Tamil population living in the South. Unprecedented racial riots followed marking the beginning of the communal conflict.

At the community level, the traditional lack of Tamil-speaking persons in public offices, administrative positions and among police officers constitute a great constraint to the provision of services to the Tamil community, in particular the administration of justice.[4] At the same time, the domination of the security forces by Sinhalese who do not speak Tamil, amplifies the sense of an occupation army, and exacerbates the already existing feelings of alienation on the part of the Tamil minority.[5]

The conflict between the LTTE and the Muslim community of Sri Lanka had its origins in the East of the island.[6] Muslim communities, particularly in the LTTE-controlled Northern areas and in the East, suffered from violence and displacement as a result of the continuing state of civil war.[7] Consequently, Muslims who lived with Tamils in the North and the East for generations were forced to flee their homes in those areas. In Batticaloa, there have been several incidents in which Muslim civilians were injured and their houses damaged during armed confrontations between Sri Lanka's Armed Forces and the LTTE. Tensions remained high in the East up to 1997.[8]

---

[1] U.S. Department of State; Sri Lanka Country Report on Human Rights Practices for 1998, 26 February 1999, Washington D.C

[2] The Economist Intelligence Unit, (EIU) Country Profile, Sri Lanka, 1998-99, 4.

[3] Ibid.

[4] UN Economic and Social Council, 12 March 1998, E/CN.4/1998/68/Add.2; 8.

[5] Ibid.

[6] Gunasekara, October 1996, 23.

[7] NGO Forum, March 1996.

[8] INFORM, February 1997; p.12.

The Sinhalese, who form the majority population, are Buddhists and speak Sinhala. Sri Lankan Tamils, including the 'estate' or 'up-country' Tamils make up 18 per cent of the population, and are predominantly Hindu and speak Tamil.[9] Seven per cent of the population are Muslim, speak mostly Tamil but are distinguished by their religion, and eight per cent are Christian. Most Tamils reside in the Northern and Eastern regions of the island.[10]

While the Tamil population form the largest community in the Northern districts (including the Jaffna peninsula), 'estate' Tamils live mainly in the hill country in the central part of Sri Lanka. Among the majority Sinhala Southern population there is, however, also a sizeable Tamil minority which has an interest in maintaining a secular constitutional state.[11] In the East, Tamils and Muslims used to inhabit the area until the twentieth century but there is also a sizeable Sinhala minority which has no interest in living in an ethnically centred Tamil State. Throughout the country, there are other important minorities which may or may not have an ethnic or religious base: Muslims, in both the North and the South, who are mainly Moors; Christians, who are Tamils; the Veddha who are animist indigenous people representing less than one per cent of the population; and the Burghers, an ethnic mélange of people equally representing less than one per cent of the population.[12]

The 1978 Constitution guarantees the fundamental rights and freedoms of citizens, including freedom of thought, conscience and worship and equal entitlement before the law.[13] Buddhism has the foremost place among religions and it is the duty of the State to protect and foster Buddhism while assuring every citizen of the freedom to adopt the religion of choice.[14] Article 21 (1) of the Constitution recognises two official languages, Sinhala and Tamil. English is the official link language. Either of the national languages may be used by all citizens in transactions with government institutions.[15]

Sri Lanka is a long-standing democratic republic with an active multiparty system. Constitutional power is shared between the popularly elected President and the 225-member Parliament.[16] Since 1994, President Chandrika Kumaratunga heads a coalition of parties led by the Sri Lanka Freedom Party, which formed the governing People's Alliance (PA).[17]

The election of the PA to form the government in August 1994 involved a transfer of power from the United National Party (UNP) that had ruled Sri Lanka for 17 years.[18] In the run up to the elections, Mrs. Kumaratunga promised to bring peace by seeking a political solution to the Tamil conflict.[19]

---

[9] Regional Surveys of the World, November 1999; p.1092.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Regional Surveys of the World; op.cit.
[14] Ibid.
[15] Ibid.
[16] U.S. Department of State; Sri Lanka Country Report on Human Rights Practices for 1998, 26 February 1999
[17] Ibid.
[18] INFORM, Sri Lanka Information Monitor, 15 February 1995;. p.1
[19] Government of the Netherlands, Ministry of Foreign Affairs, 24 July 1997

2. Political and Economic Developments, 1997 - 1999

2.1. The National Context

On 3 August 1995 while the armed conflict was continuing in the North and the East, President Kumaratunga announced a government proposal for a new system of devolution of power to eight regions which would invest extensive legislative and fiscal powers to local governments, thereby providing ethnic minorities greater autonomy in governing their local affairs.[20] Sri Lanka would become a 'union of regions', each of which would have considerable authority over law and order, land settlement and education. The devolution package proposed a new constitution and the creation of an autonomous federated state comprising the entirety of the Northern and Eastern Provinces. It also envisaged a regional administrator for that area. The proposed new constitution would include provisions relating to the transformation of the Executive Presidency into a ceremonial one, while parliamentary sovereignty would be restored.[21]

The possibilities of the devolution package receiving the approval of parliament suffered severe setbacks from May 1996 onwards, when some Buddhist and other groups including the United National Party (UNP) and the Democratic Union National Front (DUNLF) voiced their disagreement on key issues. At the same time, the Tamil parties have been holding fast to their demand for federalism.[22] By December 1998, no political consensus on the devolution proposal had been reached.[23]

The 8 January 1995 cease-fire agreement with the LTTE came to an end with the LTTE pronouncing that their expectations for a political settlement had not been met. The resulting breakdown of peace negotiations with the government on 19 April 1995 was followed by the launch of Operation 'Leap Forward' in July 1995 of the Sri Lankan Armed Forces, which for the first time since the renewed outbreak of fighting led to large scale displacement of the population in the North. On 5 December 1995, the city of Jaffna reverted to government control. This event brought to an end five years of LTTE control of Jaffna.[24]

It took three more months to clear the Jaffna peninsula of the LTTE's presence with the launching of several military operations which included 'Riveresa II' and 'Riveresa III'.[25] The leader of the LTTE, Velupaillai Prabhakaran, withdrew his forces to their newly established Kilinochchi headquarters, south of Jaffna. He called the defeat a 'temporary setback' and vowed that the struggle for an independent Tamil Eelam would continue.[26] Though Jaffna city and much of the peninsula had reverted to Government control, security authorities underestimated the LTTE's ability to launch armed terrorist attacks both within and outside the Jaffna peninsula. It took several thousand government troops to hold the territory.[27]

President Kumaratunga was anxious to emphasise that the victory was over the Tamil Tigers, and not over the 2.5 million Tamil population.[28] The LTTE reportedly, in turn launched a

---

[20] INFORM Special Dossier No. 2 on the Devolution Package, 8 August 1996.
[21] Gunasekara, op.cit; p. 112-188.
[22] INFORM, November 1998.
[23] INFORM, January 1999.
[24] EIU Country Report, 1st quarter 1996; p. 7.
[25] Far Eastern Economic Review, Asia 1997, 205
[26] Ibid.
[27] Ibid.
[28] Permanent Mission of Sri Lanka to the UN in Geneva, Sri Lanka News, February 1996;.p.4.

bombing campaign in Colombo in late 1995.[29] By late 1997, it became evident that the civil war was far from over, and the human rights situation throughout the country remained grave.[30]

During 1997 and 1998, the districts of Mannar, Jaffna, Kilinochchi, Mullaitivu and Vavuniya, in the North of the country, remained the scene of intense fighting between the LTTE and Government security forces. There were also several air strikes reported by the Air Force against LTTE bases and camps in the Mullaitivu area. With the continuing military activity, increased security measures in areas outside the North and East have led to great hardships for the civilian population in parts of the country.[31] Large-scale cordon and search operations are a common feature, and human rights observers have complained of non-compliance with Presidential directives with regard to procedures to be followed when taking persons into custody.[32]

Following the re-taking of Jaffna, the security forces launched a series of military operations to open a land route to the North. In May 1997, 'Operation Jayasikuru' (Sure to Victory) was launched to secure the main supply route through LTTE-controlled territory along the main Vavuniya-Kilinochchi road. In the first week of September 1998, 'Operation Ranahanda' (War Cry) was launched in the Sampoor area of Trincomalee District. In November 1998, 'Operation Jayasikuru' ended and the security forces launched 'Operation Rivabala'.[33] These military operations resulted in massive displacement of the affected population. The LTTE also launched its own offensive, code-named 'Oyatha Alaigal' (Unceasing Waves II), against the Government security forces' base camp at Kilinochchi. The camp was completely overrun in October 1998, and military strategists opined at the time that it had been a critical advance for the LTTE which would now have unfettered access to the administrative centre in Vanni as well as to the Mullaitivu coast.[34] The death toll was reported by both sides to be the highest in the history of the conflict as some three thousand persons are reported to have been killed or listed as missing in action.[35]

On 26 January 1998, the Government formally outlawed the LTTE, the day after an LTTE suicide squad drove a truck through road blocks in the ancient capital of Kandy and set off a bomb outside the historical Temple of Tooth, the country's holiest Buddhist shrine. 13 people were killed and 23 wounded in the attack, which occurred days before the 50th anniversary celebrations of Sri Lanka's independence which were to be held in the city.[36]

On 6 February 1998, at least nine people were killed in Colombo when a suicide bomber of the LTTE detonated explosives at a military check-point, two days after the 50th anniversary independence celebrations,[37] and on 6 March, 36 people were killed and more than 250 were wounded when a crowded bus in Colombo was the subject of an attack attributed to the LTTE.[38] After local elections on 29 January 1998, in the areas captured from the LTTE, Sarojini Yogeswaram of the Tamil Liberated United Front (TULF) was sworn in on 12 March 1998 as the first mayor of Jaffna since 1984. She was assassinated in May. On 12 September, the new mayor, Ponnuthurai Sivapalan, was killed in a bomb attack along with twelve other

[29] EIU Country Report, op.cit. p. 26.
[30] Amnesty International Report 1998; p.311
[31] Ibid.
[32] US Department of State, Sri Lanka Country Report; op.cit
[33] INFORM, December 1998.
[34] Ibid.
[35] U.S. Department of State, Country Report: Sri Lanka op.cit.
[36] Reuters, 26 January 1998.
[37] Reuters, 7 February 1998
[38] Reuters, 6 March 1998

persons, including the Jaffna Brigade Commander and senior police officers.[39] Following the attack, the LTTE issued a statement calling on all members of local government bodies to resign.[40] Other politicians killed in Jaffna were S.A. Oswald, the secretary of the SLFP Jaffna branch in June 1998[41] and Pon Mathimugavaja, the Secretary of the TULF Jaffna branch in December 1998.[42]

Following the bomb explosion which killed the mayor and other government officials in Jaffna, government forces tightened security throughout the peninsula. Several villages were cordoned off and subject to intense searches by security personnel.[43] Although many of those arrested were released after identity checks lasting several hours to days in custody, the Government justified these checks on security grounds, while many Tamils claimed that the arrests were a form of harassment.[44] These operations intensified following major incidents in which the LTTE was implicated. Thus, obtaining accommodation and employment in the areas in the South is becoming increasingly difficult for the Tamil population, and the requirement of registration with the police compounds this problem. At checkpoints on streets throughout the island, particularly in the North, civilians are systematically inspected several times a day. For Tamils travelling from Jaffna peninsula to other parts of the country, Government forces continue to insist on definite proof of purpose for visits especially to the South, including guarantees from family members and business associates.[45] On some days, over 2,000 persons reportedly arrived at the checkpoint in Vavuniya, only to be turned back or directed to so-called transit camps in Vavuniya to await clarification of their claims.[46]

In August 1998, President Kumaratunga announced that she was willing to accept a third party as mediator in the negotiations with the LTTE but they would first have to relinquish their demand for a separate state.[47] Although the State of Emergency has been lifted in the South in July 1997, it was extended to the whole of the island on 4 August 1998, and since then renewed every month.[48] Also on that day, the President announced that council elections scheduled to be held on 28 August, would be postponed because the armed forces could not provide security to the candidates and polling stations.[49] However, this was overruled by the Supreme Court recently and provincial council elections are set to take place sometime in April 1999.

All flights to Jaffna have been suspended by the government following the crash on 29 September, of a Lionair flight in suspicious circumstances. It killed all 52 passengers on board. Lionair was the only air link from Colombo to Jaffna. Along with the lack of sea transport as well as a land route, the lack of flights has caused untold problems for persons wanting to travel between Colombo and Jaffna.[50] Estimates say that some 5,000 persons are stranded in Trincomalee waiting for transport to the North, similarly over 1,500 persons wait in Jaffna for transport to the South. Soldiers are unable to come home on leave, students unable to report to schools and universities, workers unable to report to jobs, expatriates stranded for weeks without being able to return to their homes, jobs and schools outside the country. Although

---

[39] INFORM, September 1998, p. 8.
[40] Ibid.
[41] EELAM UPDATE, July 1998.
[42] EELAM UPDATE, December, 1998.
[43] INFORM, September 1998, p.9.
[44] U.S. Department of State, Country Reports for 1998: Sri Lanka, February 1999.
[45] UN Economic and Social Council, 12 March, 1998; p.5.
[46] INFORM, November 1998.
[47] Daily News, "India should help in finding peaceful solution, says GL - Sri Lanka keen to have dialogue with LTTE", 2 September 1998, 1
[48] Reuters, 4 August 1998.
[49] Reuters, 5 August 1998.
[50] Lankadeepa, "Plane disappears with 48 passengers in Jaffna", 30 September 1998

flights were restored with the use of military aircraft in January 1999, logistical problems travelling to Jaffna remain.

In the East, Batticaloa continued to be without electricity for months in 1998, with no signs of the electricity being re-installed.[51] Similarly, restrictions on the transport of food and other essential items within the areas not under the control of the Armed Forces in the East continue to create major obstacles to normalcy.[52]

Economic Developments

Sri Lanka is a low-income country with a market economy that is based on the export of textiles, tea, rubber, coconuts, gems and on the earnings from tourism and remittances of Sri Lankans abroad. The gross domestic product *per capita* is approximately $820. In 1997, the government made significant steps toward economic reform and liberalisation, including privatising some government enterprises and promoting foreign investment and trade. These steps continued in 1998.[53] The economy's growth rate was 6.8 per cent in 1997 and the EIU has revised down its 1998 growth forecast figure from 5.2 per cent to 4.9 per cent due to continued strong garment and tea exports. In addition to the export position, there has been a deterioration in domestic macroeconomic performance with inflation continuing, the fiscal deficit rising and defence expenditure estimated to be 47 million rupees above budget in 1999.[54]

2.2 The Regional Context

The ethnic conflict in Sri Lanka has a spill-over effect on regional security. The LTTE apparently established solidarity with a number of other insurgent groups and is reported to have obtained their weapons from abroad, some from sources in nearby countries.[55] From about 1992, it appears that the LTTE has been shifting its international operations from Western Europe to Scandinavia, Eastern Europe and to South East Asia. The shift from West to East, particularly to South East Asia and the Far East has enabled the LTTE to grow in the Asia-Pacific region.[56] In neighbouring India, home to the largest Tamil community, there was widespread sympathy for the situation of the Tamils in Sri Lanka. The Tamils of Sri Lanka share linguistic, religious and political affinities with the Tamils in Tamil Nadu state in Southern India, which has a Tamil population of some 64 million. When Tamil refugees began to flee Sri Lanka in 1983, India was their natural, initial destination where they were welcomed and assisted by the government.[57]

In the mid 1980s, India made efforts to mediate in the ethnic confrontation,[58] while at the same time, Tamil militant groups continued to enjoy the support of both the central government as well as the government of Tamil Nadu.[59] On 30 July 1987, India concluded the Indo-Sri Lanka Peace Accord with the Government of Sri Lanka which contained elements for a political solution in the devolution of powers to an elected Provincial Council of the Northern and Eastern Provinces. Under the Accord, the Government of India was to underwrite and guarantee

[51] INFORM, November 1998, p. 8.
[52] Ibid.
[53] EIU Country Profile, Sri Lanka, 1998-99; p. 11.
[54] EIU, Country Report: Sri Lanka, 4th quarter 1998, p.6.
[55] "International and Regional Security Implications of the Sri Lankan Tamil Insurgency", by R. Gunaratna, International Foundations of Sri Lankans, 1997; p.29-34.
[56] Ibid.
[57] Bastiampillai, B., July 1994; p. 2
[58] "Across Borders", by J.N. Dixit, Thomson Press (India) Ltd.; p.183.
[59] "Indian Intervention in Sri Lanka", Rohan Gunaratna, South Asian Network on Conflict Research, Colombo; p.93.

the agreement and in the event that any militant groups in Sri Lanka did not accept the settlement, India would provide military assistance at the request of the Government of Sri Lanka in order to ensure its implementation. An Indian Peace Keeping Force (IPKF) landed in Jaffna the day after the Accord was signed, but ended up fighting the LTTE which refused to surrender all its arms as envisaged under the Accord.[60]

Despite serious reservations expressed by Tamil groups that the political settlement contained in the Accord did not meet their aspirations, the Government of Sri Lanka proceeded to set up a Provincial Council for the North-eastern Province upon approval by Parliament of the thirteenth Amendment to the Constitution and the Provincial Councils Bill.[61] However, the political settlement fell apart when the Chief Minister (belonging to the Eelam Peoples Revolutionary Liberation Front) of the North-eastern Province unilaterally declared an Eelam Democratic Republic. With heavy losses being incurred by the IPKF in the civil war against the LTTE, it was obvious that by the time the IPKF withdrew from Sri Lanka in 1990, the attempts of the Indian government to foster settlement of the conflict had failed. Eelam War II started almost immediately after the IPKF's withdrawal.

In 1991, the sympathy of the population in Southern India for the cause of the LTTE changed dramatically, when Rajiv Gandhi, who was campaigning in Tamil Nadu state for election to be the next Prime Minister, was assassinated by an LTTE suicide-bomber. This incident provoked anti-LTTE sentiments among the local Tamil population in India and the subsequent security measures imposed by the Indian authorities impacted adversely on the refugees as well. Investigations launched after the assassination resulted in many refugees falling under suspicion of being LTTE members. Since then, India has proscribed the LTTE and has collaborated with the Sri Lankan authorities on related security matters.

3. Overview of the Human Rights Situation 1997-1999

1997 was the year in which the ethnic conflict on the island reached new proportions. In addition to the loss of lives, thousands have been injured and over one half of a million persons are internally displaced.[62]

The Government controls all security forces. The 50,000-member police force is responsible for internal security in most areas of the country and also has been active in military operations against the LTTE. The 118,000-member army (which includes the Army Volunteer Force), the 15,000-member navy and the 17,000-member air force bear principal responsibility for conducting operations against the LTTE. The Police Paramilitary Special Task Force (STF) also engages the LTTE. There are over 15,000 Home Guards, an armed force drawn from local communities who are responsible to the police for the security of Muslim and Sinhalese village communities in or near the war zone. In addition, there are various Tamil militia groups opposed to the LTTE which appear to act, at times, independently of government authority. These pro-government Tamil militant groups have been reported to have at times committed extra-judicial killings as well as other acts of human rights violations and the government has not taken the necessary action to stop such abuses.[63] During 1997 and 1998, there were widespread reports of some members of the security forces committing serious human rights abuses.[64]

---

[60] Ibid.
[61] Ibid.
[62] UN Economic and Social Council, 12 March, 1998: E/CN.4/1998/68/Add.2, p. 8
[63] U.S. Department of State, Sri Lanka Country report on Human Rights Practices for 1998; op.cit. p.3.
[64] Ibid.

According to the U.S. Department of State, the ongoing war with the LTTE continued to be accompanied by serious human rights abuses by the security forces. At least 33 cases of extra-judicial killings were reported in 1998, prisoners captured on the battlefields were allegedly killed, scores of persons reportedly "disappeared" or were killed after last being seen near the army's forward defence lines in the North, areas that civilians are ordered by the military to avoid. It is also reported that torture remained a serious problem while prison conditions remained poor. The report also indicates that arbitrary arrests, including short-term mass arrests and detentions continued, often accompanied by failure of the security forces to comply with some of the protective provisions of the Emergency Regulations. Impunity for those responsible for human rights abuses are still a serious problem.[65]

Similarly, according to the United Nations Special Rapporteur on extra-judicial, summary or arbitrary executions, reports received in 1997 indicated that the human rights situation in Sri Lanka remained precarious.[66] Torture is reportedly used by armed forces with two principal aims: to obtain information on insurgent groups and to intimidate the population. It seems to be a common practice that members of the armed forces and security forces arrest persons without a warrant, subject them to interrogation and take them to judicial authorities days later, after forcing them to sign a statement of good treatment.[67]

In September 1998, Amnesty International expressed concern about continuing reports of arbitrary arrests, detention, torture and ill-treatment of Tamil detainees, as well as poor prison conditions and the lack of facilities at detention centres.[68] The concern expressed by Amnesty International and other human rights observers was over the repeated practice on the part of the army and police in the North and East to allow (if not encourage) members of armed Tamil groups opposed to the LTTE to carry out search operations, screen civilians and in the process torture or commit other human rights violations against them. Such operations have often led to human rights violations, including illegal arrest, prolonged detention and torture, 'disappearances' and extra-judicial executions.[69]

Amnesty International expressed concern that the armed forces are said to be responsible for the harassment, and the 'disappearance' of Tamils suspected of being members of the LTTE.[70] There are many accounts of retaliation by the armed forces against Tamil civilians in the North and East for LTTE attacks against the armed forces that have resulted in casualties. As with extra-judicial killings, the exact number of 'disappearances' was impossible to ascertain due to censorship of news about security force operations and infrequent access to the North and East.[71]

While some progress was made on a few long-standing high profile cases of extra-judicial killings and 'disappearances', in most cases no progress was reportedly made with the investigation or prosecution giving the appearance of impunity for those responsible for human rights violations. The Government has e.g. been slow to proceed with investigations to the Chemmani mass grave and no date has been set for the exhumation nor for the visit of the investigating magistrate.[72]. There were also no arrests made in connection with the 'disappearance' and presumed killing of some 350 LTTE suspects in Jaffna in 1996 and 1997.

---

[65] Ibid.
[66] UN Economic and Social Council, 12 March, 1998, E/CN.4/1998/68/Add.2, 12 March 1998.
[67] Ibid.
[68] Amnesty International, News Release - ASA 37/23/98, 3 September 1998.
[69] Amnesty International, op.cit; fn.30.
[70] Amnesty International, Sri Lanka Nov. 1997.
[71] Ibid.
[72] CNN interactive, Sri Lanka says it misinformed public on mass grave, 18 February 1999.

The Government is reported to have infringed on citizens' privacy rights and at times restricted freedom of the press by directly censoring domestic newspaper reports and foreign television broadcasts on military and security operations. There have also been reports of harassment of female Tamil detainees, including reports that women have been kept in detention at police stations for several days, without charge, and without a female officer being present.[73]

The Government, however, also took steps to control human rights abuses by government forces. On 17 March 1997, the Government inaugurated a five-member Human Rights Commission (HRC) under the Human Rights Commission of Sri Lanka Act No. 21 of 1996[74]. The HRC took over from the Human Rights Task Force which had been established in 1995. The legislation provided for representative actions to be brought on behalf of aggrieved persons and for awards of damages.[75] The HRC established ten branches in various parts of the country and it is estimated that it has well over 2,000 cases of alleged human rights abuse pending[76].

The Government also established a cabinet-level committee, initially known as the Anti-Harassment Committee, to investigate complaints and take remedial action when necessary to alleviate problems of alleged harassment and arrests and other security force actions.[77] In a separate development, the three commissions of inquiry established in 1994 to investigate 'disappearances' between 1988 and 1994, presented their report to the President in 1998. As a result, the Attorney-General's Office initiated over 100 indictments against members of the security forces implicated and court proceedings have been instituted in some cases.[78]

The U.S. Department of State took the view that there was no attempt, as in the past, to use the Emergency Regulations to cover up security force misdeeds.[79] In addition, through its rulings, the judiciary continued to exhibit its independence and upheld individual civil rights. The Government continued to take effective measures to limit civilian casualties during military operations and also continued to provide relief to those displaced by the conflict even though many were still in areas under LTTE control such as in Vanni area.[80]

Human rights abuses by the LTTE against Tamils not supporting the LTTE have also been well documented. These include harassment, intimidation, detention, torture, summary execution as well as 'disappearances'[81]. Torture is reportedly used on a routine basis[82] and LTTE harassment of Tamils who oppose their activities has been known to extend outside Sri Lanka to Tamil expatriate communities in Europe and North America.[83] Of particular concern are reports of kidnapping of Tamil children to become LTTE fighters[84]. Tamil human rights groups are concerned about the abuses perpetrated by the LTTE, particularly, "its cult-sacrificial death culture and rejection of democratic institutions".[85] In October 1998, there were several reports of the LTTE forcibly abducting school children from several areas in the Batticaloa and Amparai Districts. It was feared that these children were being recruited for training, to replace cadres

---

[73] US Department of State, Sri Lanka Country Report; op.cit.
[74] The Sri Lankan Foreign Ministry Bulletin, Sri Lanka News Update, 19 March 1997.
[75] US Department of State, Sri Lanka Country Report; op.cit.
[76] US Department of State, Sri Lanka Country Report; op.cit.
[77] Ibid.
[78] Ibid.
[79] Ibid.
[80] Ibid.
[81] Canada-Asia Working Group, Op.cit; p.46.
[82] US Department of State, Sri Lanka Country Report; op.cit.
[83] McDowell, 1996, p. 252
[84] Ibid.
[85] The University Teachers for Human Rights (Jaffna) (UTHR-J)

lost in the Kilinochchi attack.[86] As a consequence, a large number of families fled areas of the East under LTTE control, in an attempt to save their children from being kidnapped. Principals and teachers of schools in these areas complained that they are unable to serve in these schools any longer due to the blatant activities of the LTTE.[87]

3.1. The Emergency Regulations and the Prevention of Terrorism Act

On 4 August 1998, President Kumaratunga extended the state of emergency, which was previously confined to the Northeast and a few other areas including Colombo, to an island-wide state of emergency under Section 2 of the Public Security Ordinance.[88] The Emergency (Miscellaneous Provisions and Powers) Regulations No 4 of 1994 therefore remains in force throughout Sri Lanka.

The Government amended the Emergency Regulations in September 1995 to require the armed forces to inform the nearest police station when it became necessary to detain a person for more than 24 hours, thereby bringing the Regulations in line with civil law (previously, persons could be held for over seven days without notice being given). Under the new Emergency Regulations, secret detention is prohibited, failure to disclose the place of detention is punishable, and security force personnel can be fined or jailed for failure to comply with the provisions of the legislation. Detainees can also challenge their detention and sue the Government for violating their civil rights in the Supreme Court.[89] However, arrests and detentions by the police reportedly continued to take place in violation of the legal safeguards built into the Emergency Regulations and other legislation, particularly regarding requirements that receipts be issued and that the HRC which has a mandate to visit those arrested be notified of any arrests within 48 hours.

The Prevention of Terrorism Act, which gives wide powers of arrest and detention and also allows for prolonged detention and submission of confessions as evidence, remains in force.[90]

3.2. Specific Situations

Right to Physical and Mental Integrity and Not to be Subjected to Torture

Enforced disappearances posed significant human rights violations in 1997 and 1998. Although according to the US Department of State, there were no reports of disappearances in Colombo, Trincomalee or Jaffna over the course of 1998, " disappearances" occurred in other parts of the North and East, involving at least eleven persons who " disappeared" after last known to be in the custody of the security forces.[91] In 1997, Amnesty International reported that approximately 80 Tamil civilians reportedly disappeared after arrest by the army, mainly in the northern areas,[92] while the U.S. Department of State stated that there were 125 confirmed cases of " disappearances" for that year.[93] A Board of Investigation set up in 1996 within the Ministry of Defence to investigate " disappearances" in Jaffna, received complaints concerning 760 persons. Out of these, 180 were found to be in detention, while the rest were unaccounted for as at end 1997. The Working Group on Enforced or Involuntary Disappearances of the Commission on

---

[86] INFORM, October 1998; p.9.
[87] Ibid.
[88] Daily News, 5 August 1998.
[89] US Department of State, Sri Lanka Country Report; op.cit.
[90] Ibid.
[91] US Department of State Sri Lanka Country Report; op.cit.
[92] Amnesty International Report for 1998.
[93] US Department of State Sri Lanka Country Report; op.cit.

Human Rights, during the Commission's fifty-fourth session in 1998, reported that it had received 695 new cases of disappearances over the period under review of which 77 had occurred in 1997.[94] Since the establishment of the Working Group in 1980, it had received 12,208 cases of disappearances alleged to have occurred in Sri Lanka during the two periods of 1987 to 1990 in the south of the country in relation to the JVP uprising, and from 1990 onward, in the North and East, in relation to the conflict with the LTTE.[95]

Extra-judicial killings had also continued to take place in 1997 and 1998. Amnesty International stated that "there were several reports of alleged extra-judicial executions, particularly in Vavuniya and the Vanni[96]. In September, 1997, the body of the Reverend Arulpalan of the Jaffna diocese of the Church of South India and two others were found in their home village in the security zone around Kilinochchi town after they were last seen being arrested by soldiers.[97] Eight Tamils were massacred in Thampalakamam in Trincomalee district, allegedly by police and home guards, possibly in retaliation for the incident at the Temple of the Tooth.[98] Other killings were also reported.[99]

Mass arrests of Tamils were reported to be a common feature, especially after the occurrence of any security incident. It is reported that after the attack on the World Trade Centre in Colombo, 965 Tamils were arrested.[100] Amnesty International stated that as at end 1997, there were 1,200 detainees under the Emergency Regulations or Prevention of Terrorism Act, yet to be charged, out of whom 400 had been held for more than two years.[101] Amnesty International also reported that relatives of LTTE members were arrested to put pressure on the LTTE members themselves.[102] The US Department of State reported as follows: "Security forces continued to conduct mass detentions and arrests of young Tamils, both male and female. Major sweeps and arrests occurred in Colombo, the East, and on the Jaffna peninsula. Although exact numbers of arrests were impossible to determine, they reached into thousands. Hundreds of Tamils at a time were picked up during police actions. Most were released after identity checks lasting several hours to several days. The Government justified the arrests on security grounds, but many Tamils claimed that the arrests were a form of harassment". [103]

During the continuing hostilities there have been continuous reports of torture by army personnel. These are gleaned from the testimony of the victims of torture, corroborating medical certificates, Supreme Court judgments in fundamental rights cases and reports from Government inquiry commissions.[104] Allegations of torture by the security forces include having petrol poured over their bodies, chilli powder applied to exposed parts of the body, being repeatedly plunged into barrels of water, electric shocks, near suffocation with wet rags, burning with cigarettes, beatings with plastic pipes, being hung upside down and being beaten on the soles of the feet. These treatments were usually inflicted during interrogation about suspected involvement with the LTTE. [105] Humanitarian organisations reported that while torture and

---

[94] Commission on Human Rights fifty-fourth Session,(E/CN.4/1998/43).
[95] Ibid.
[96] Amnesty International Report; op.cit.
[97] Ibid.
[98] US Department of State Sri Lanka Country Report; op.cit.
[99] Ibid.
[100] Amnesty International Report for 1997.
[101] Ibid.
[102] Ibid.
[103] US Department of State Sri Lanka Country Report; op.cit.
[104] Amnesty International, Urgent Action, Torture ASA 37/19/98, 6 August 1998.
[105] US Department of State, Sri Lanka Country Report; op.cit.

abuse by the security forces remained widespread, its use had diminished, especially on the Jaffna peninsula[106]

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

Although the Constitution provides for freedom of speech and expression, restrictions are permitted on national security grounds. In 1997 and 1998, the commitment of the State to safeguard the freedom of expression and permit free circulation and dissemination of information suffered many setbacks.[107] Censorship was imposed while the Sri Lankan Government controls the country's largest nationalised newspaper chain[108] as well as two major television stations and radio broadcasting.[109] The Government strictly limits the access of domestic and foreign media to information and censors news relating to military and police matters.[110]

With the armed forces denying journalists access to the conflict zones, and with censorship imposed on all local media reporting of military affairs during the main offensive during 1997 which continued in 1998, it has been impossible to have reliable, independent accounts of the conduct of the armed conflict. [111]

Freedom of movement with special reference to the internally displaced persons

The Sri Lankan Constitution provides for freedom of movement, of choice of residence and of return to the country. Although the Government generally respects the right to domestic and foreign travel, for reasons of security related to the armed conflict, the government imposes severe restrictions on internal travel. In particular, travel from the LTTE-controlled areas in the north to the south is extremely restricted; it is subject to strict security clearances and must satisfy certain pre-conditions. In addition, there are restrictions for persons originating from the northern parts to stay in the South; such restrictions include the provision of a surety. These security measures have been particularly restrictive on the movement of young Tamil males.[112] In Jaffna, movement is strictly regulated by military checkpoints throughout the city.[113] Tamils travelling in and out of Jaffna face tremendous difficulties, due in part to the security measures as well as to the limited availability of transportation between Jaffna and the rest of the country.[114] Travel by vessel along the North-eastern coast entails serious security risk as the LTTE's forces are active along the coastline ("Sea Tigers").

According to the UN Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions, the Government's military operations have caused hundreds of thousands of civilians to flee their homes and seek shelter in camps financed by the Government and NGOs.[115] A disturbing feature of the situation of displaced persons is the ambivalent attitude of the State towards relief agencies and the role that the latter could play in providing assistance, relief and emergency services to the displaced.[116] Almost half of the internally displaced population resides in "uncleared" areas under the control of the LTTE, where government presence is minimal. International agencies attempt to support the delivery of essential services to the civilian

[106] ibid.
[107] INFORM, November 1998.
[108] Associated Newspapers of Ceylon Limited.
[109] Ibid.
[110] US Department of State, Sri Lanka Country Report; op.cit.
[111] Ibid.
[112] Ibid..
[113] Ibid.
[114] Ibid.
[115] E/CN.4/1998/68/Add.2, 12 March 1998; op.cit.
[116] NGO Forum on Sri Lanka, March 1996; p. 3.

population in these areas but are often subject to logistic and security-related constraints. As a result, the supply of food, clean water, shelter materials and medical services is often inadequate. In the context of the on-going hostilities, the life of the civilian population, including those of the internally displaced persons, in these areas, can only be described as precarious.[117]

Despite the Government's call on people to return to their homes, there has been some reluctance on the part of the displaced to do so. Security considerations as well as a lack of confidence in the State's rehabilitation and reconstruction programme have contributed to this reluctance.[118] The increased scope and intensity of military operations in Northern Sri Lanka during the latter part of 1997 and in 1998, has led to the renewed displacement of hundreds of thousands of persons, some for the second or third time.[119]

4. Sri Lankan Refugees and Asylum Seekers: Global Trends

4.1. Sri Lankan Refugees and Asylum Seekers in the Region

India continues to be the largest receiver of Sri Lankan asylum seekers. Since Sri Lankan asylum seekers started to arrive in large numbers in India in 1983, they were allowed to stay and are accommodated in camps in Tamil Nadu under the assistance of the Government of India. As of the end of 1998, a total of 70,337 Sri Lankans were living in 131 camps in Tamil Nadu state, which includes some 15,000 who arrived between 1996, when the conflict escalated, and the end of 1998. Another estimated 40,000 persons reside outside camps in various parts of Tamil Nadu. It is UNHCR's view that, with few exceptions, Sri Lankan asylum seekers generally are provided asylum in India.

Only those Sri Lankans who reside in camps are considered refugees by the Government of India. These refugees receive assistance from the Government and UNHCR is not involved in any assistance activities for this group. UNHCR's assistance is limited to the framework of the 1992 agreement with the government of India, under which the Office monitors the voluntariness of repatriation which takes place through bilateral arrangements between the Government of India and the Government of Sri Lanka. There is limited freedom of movement in and out of the camps, and camp residents are generally allowed to work outside but must return to the camps daily. Although UNHCR does not have access to the camps in Tamil Nadu, the refugees write to UNHCR concerning their various problems or else approach the office situated in Chennai. With regard to those who reside outside camps, they do so as ordinary foreigners, having to register their stay with the local police, and are subject to 'leave India notices' or deportation orders once their residential permits expire. Despite the expiration of their stay permits, they are generally allowed to remain by the authorities. UNHCR has assisted in the resettlement of a very small number of non-camp refugee residents, who were subject to repeated 'leave India notices' and had serious reasons not to be able to go back to Sri Lanka.

In addition to the above, there are also three 'special' camps which accommodate, under detention-like conditions, those suspected of LTTE activities.[120] Sri Lankans who arrive in Tamil Nadu are initially screened to determine if they have links with the LTTE or not, and if suspected of involvement, will be sent to the "special camps". It appears that even if persons are cleared by the courts of suspected militant activities, they are still accommodated in the

[117] INFORM, November 1998.
[118] Ibid.
[119] The Island, 28 October 1998; p.1.
[120] There are some estimated 150 persons in these camps.

'special camps', charged with illegal entry into India under the Foreigners Act. Unlike those in the ordinary camps, there is no freedom of movement from these 'special camps' and conditions are less satisfactory than those in the regular camps. UNHCR receives a fairly large number of complaints from the residents of these 'special camps'; such complaints range from conditions in the camps, to the lack of freedom of movement, to the indefinite nature of stay in such camps. Many residents in these camps also complain that despite being cleared by the courts, they are still considered as 'suspects' by the authorities and therefore housed in the 'special camps'. Residents of the 'special camps' are allowed to leave the camps only if they leave the country. Whenever appropriate, UNHCR refers the complaints to the National Human Rights Commission. It is known that some individuals from the 'special camps' are able to find solutions abroad with relatives, and have left India.

A small number of Sri Lankan asylum seekers have also approached UNHCR for assistance in other neighbouring countries such as Nepal and others in Southeast Asia where UNHCR exercises its mandate to undertake refugee status determination.

4.2 Sri Lankan Refugees and Asylum Seekers in Europe since 1990

Asylum applications of Sri Lankan nationals

Despite the intensification of the conflict at the end of 1995, UNHCR's statistics indicate that the number of asylum applications from Sri Lankans in the major asylum countries in Europe have not increased significantly. Of interest is that in 1998, for the first time, two eastern European states were recorded as having received Sri Lankan asylum claims; these were Poland (643 applications) and Romania (27 applications).

From 1990 to 1998, some 138,000 Sri Lankan Asylum Seekers applied for asylum in the 16 European countries considered here, constituting 3.6 per cent of the total number of asylum applications lodged. The annual number of Sri Lankan Asylum Seekers peaked in 1991 when 24,000 Sri Lankan nationals requested asylum. From 1993 to 1998, the annual number of Sri Lankans applying for asylum in Europe has been quite constant numbering between 12,000 and 14,000 each year. In 1998, the number of Sri Lankan asylum applications reached 13,100, a decrease of 6 per cent compared to 1997 (14,000) (see Table I.). However, as the total number of asylum applications increased with some 22 per cent, the percentage of Sri Lankan asylum applications in total applications fell from 4.4 per cent in 1997 to 3.5 per cent in 1998.

Table I. Applications and recognition of asylum-seekers originating from Sri Lanka in Europe, 1990-1998

	1990	1991	1992	1993	1994	1995	1996	1997	1998	Total
Applications	19,200	23,700	16,800	12,300	12,900	12,800	13,100	14,000	13,100	137,900
UN Convention status	2,710	4,500	4,580	4,570	3,920	2,000	1,630	1,170	350	25,430
Humanitarian status	990	1,690	4,860	2,720	860	950	2,680	1,100	820	16,670
(Percentages)										
Convention rec. rate(1)	14.	19.0	27.3	37.2	30.4	15.6	12.4	8.4	2.7	18.4
Total rec. rate(2)	19.3	26.1	56.2	59.3	37.1	23.0	32.9	16.2	8.9	30.5

Notes

See also Notes Table II.

(1) Convention recognition rate: UN Convention status recognitions divided by applications.

(2) Total recognition rate: UN Convention status plus humanitarian status recognitions divided by applications.

During 1990 to 1998, one-third (32 per cent) of all Sri Lankans who applied for asylum in the countries considered here lodged their asylum application in Germany. The second largest country of destination was Switzerland, accounting for 18 per cent of all Sri Lankan asylum

applications lodged, followed by the United Kingdom (16 per cent, cases only) and France (15 per cent). (Table II). In 1998, however, the number of Sri Lankan asylum applications in United Kingdom almost doubled as compared to 1997, as a result of which the country was the largest recipient country of Sri Lankan Asylum Seekers in Europe, accounting for 27 per cent of all applications lodged.

Recognition of Sri Lankan Asylum Seekers

Between 1990 and 1998, some 25,400 Sri Lankan Asylum Seekers were granted Convention refugee status, 18 per cent of the total number of Sri Lankans who applied for asylum. In addition, some 16,700 Sri Lankan nationals were allowed to remain on humanitarian grounds (12 per cent). In 1998, the total recognition rate for Sri Lankan Asylum Seekers reached 8.9 per cent, half the recognition rate of 1997 and the lowest rate in the past nine years (see Table I.).

Between 1990 and 1998, France granted refugee status to 15,600 Sri Lankan Asylum Seekers, 37 per cent of all Sri Lankans granted refugee or humanitarian status in Europe. Germany accounted for 21 per cent of all Sri Lankans granted refugee or humanitarian status, followed by the United Kingdom (20 per cent, cases only). The total recognition rate for Sri Lankan Asylum Seekers was more than 50 per cent in France and Norway (see Table II).

Table II. Applications and recognition of asylum-seekers originating from Sri Lanka in Europe, 1990-1998

Country of asylum	Asylum applications	1951 UN Convention	Humanitarian status	Conv. rec. rate (%) (1)	Total rec. rate (%) (2)
Austria(a)	1,000	10	-	1.0	1.0
Belgium	900	20	-	2.2	2.2
Czech Republic	500	-	-	-	0.0
Denmark	2,100	30	720	1.4	35.7
Finland	200	-	40	-	20.0
France(a)	20,200	15,640	-	77.4	77.4
Germany (b)	43,700	8,810	190	20.2	20.6
Greece	400	10	-	2.5	2.5
Italy	300	30	-	10.0	10.0
Netherlands	14,900	270	1,710	1.8	13.3
Norway	2,800	-	1,900	-	67.9
Poland	2,200	60	-	2.7	2.7
Spain	100	10	-	10.0	10.0
Sweden(c)	1,400	-	430	-	30.7
Switzerland(d)	24,900	290	3,540	1.2	..
United Kingdom (e)	22,200	230	8,120	1.0	37.6
Total	137,800	25,410	16,650	18.4	30.5

Notes

(1) Convention recognition rate: 1951 UN Convention divided by applications.

(2) Total recognition rate: 1951 UN Convention and humanitarian status divided by applications.

(a) 1998 decisions not included.

(b) Includes first and reopened applications.

(c) Some Convention refugee recognitions are included in Humanitarian status.

(d) Humanitarian status refers to 1996 and later only.

(e) Cases.

Due to the fact that some countries grant residence permits to Asylum Seekers who have not been granted refugee or humanitarian status, the above statistics do not provide a precise indication of the "total immigration effect" of Sri Lankan refugees in Europe, that is, the total

number of asylum seekers that have been granted residence permits. Sweden is one of the very few countries for which such a long-term assessment can be made. Between 1980 and 1997, 610 Sri Lankans were issued residence permits on refugee or refugee-like grounds, 0.3 per cent of all residence permits issued for refugee-related reasons.

The Sri Lankan refugee population in selected countries

While the asylum application and refugee status determination data allow for a comparison of the "asylum experience" in all European countries, they form only a rough indication of the actual size of the resident refugee population. Only a few countries keep refugee registers which allows for the assessment of the increases and decreases in refugee populations.

At the end of 1998, 382 recognised Sri Lankan refugees resided in *Switzerland*, one per cent of the total number of recognised refugees in the country (24,340). By mid-1996, *Belgium* hosted 9 Sri Lankan refugees, less than one per cent of the national refugee population (36,000). At the end of 1996, the Sri Lankan refugee population in *France* numbered 15,790 persons, 13 per cent of the entire refugee population (125,300).

As one of the few countries in Europe, the Swiss statistics provide a precise indication of the total number of Sri Lankans in Switzerland under all forms of protection. Thus, at the end 1998, when all forms of *non-refoulement* are included (Convention refugee status, humanitarian status, pending cases and returns which cannot not be executed), Switzerland counted some 28,200 Sri Lankan nationals, 18 per cent of the total number of persons in a comparable situation (155,100).

4.3. - –Sri Lankan refugees and Asylum Seekers in North America

Between 1990 and 1998, Canada received 31,300 Sri Lankan asylum applicants, of whom some 25,500 (81 per cent) were granted refugee status. In the United States, some 1,000 Sri Lankan nationals applied for asylum during the same period (cases only), 18 per cent of whom were granted asylum in first instance.

4.4 The Treatment of Sri Lankan Asylum Claims

Due to the current overall situation in the country, and in particular, the ongoing armed conflict, the prevailing presence of security forces, the presence of militant groups which operate relatively freely in certain areas, the overwhelming concern of the Sri Lankan authorities with matters of security and emergency rule over the whole island since August 1998, refugee claims of Sri Lankan asylum seekers must be examined on their merits. When examining asylum claims of Sri Lankan nationals, consideration must be given to both state and non-state actors of persecution. Additionally, the cumulative effect of alleged persecutorial acts should be taken into account. Short-term detentions, occasional arrests and harassment may not amount to persecution. Cumulatively, however, they may well amount to persecution.

No Sri Lankan asylum-seeker should be barred from having his/her refugee claim examined on its merits, on the basis of the availability of an internal flight alternative. However, internal relocation is a relevant factor in assessing the well-foundedness of the fear of persecution. Thus, the availability of internal flight alternative to Sri Lankan asylum seekers must be determined in each individual case, taking into consideration such elements as the background of the individual concerned, the reasons for fear of persecution and the restrictions on freedom of movement within the country.

5. UNHCR's Operation in Sri Lanka

5.1. Background to UNHCR's presence in Sri Lanka

UNHCR's presence in Sri Lanka was established in 1987 in the context of the repatriation of Sri Lankan refugees from India which followed the signing of the Indo-Sri Lanka Peace Accord. Upon withdrawal of the IPKF in 1989, renewed fighting broke out (Eelam War II) and UNHCR then became involved in protection of internally displaced persons as a means of reducing refugee flight out of the country. Since then, UNHCR has been engaged in assisting both returnees and internally displaced persons within the framework of an agreement with the Sri Lankan government concluded on 1 February, 1993. In 1995, with the escalation of the conflict, particularly in Jaffna, which came under the control of the Sri Lankan forces at the end of the year, large numbers were again displaced both within Jaffna province itself and also from Jaffna into the Vanni region. More recently Sri Lankan army military exercises in the Vanni, such as "Edibala", "Jayasikuru" and "Rivabala" had also caused massive displacements. With the suspension of repatriation from India in 1995 due to the escalation of the conflict, and as large-scale internal displacements continued, UNHCR's work became entirely focused on internally displaced persons, among whom are also previous repatriates from India who have been unable to return to their places of origin due to the conflict.

Although the government has assumed responsibility for internally displaced persons throughout the country, limited access to conflict-affected areas, in particular those controlled by the LTTE, has curtailed its ability to operate in such areas. There is thus, a vital role being played by international organisations in supporting government efforts to protect and assist displaced populations. In particular, UNHCR is committed to the belief that by virtue of its protection expertise and humanitarian as well as impartial character, it has the unique capability to operate in conflict situations, and thus has continued to maintain a presence in the country, operating from behind both sides of the front-line. Currently, UNHCR's operations in Sri Lanka are based on the 1993 agreement with the Government of Sri Lanka and on a letter of the UN Secretary-General of 15 August, 1997, which confirmed UNHCR's coordinative role with regard to humanitarian and relief assistance for internally displaced persons in Sri Lanka.

5.2. *Activities with internally displaced persons*

Although it is difficult to determine the exact number of internally displaced persons, estimates made by informed sources are in the range of several hundred thousands. They are scattered mainly in the northern part of Sri Lanka, bordering the affected areas. According to the Sri Lankan authorities, over 600,000 persons were internally displaced as of end 1998 of which some 40% live in the Vanni region while another 40% are in Jaffna and the rest scattered in districts of Anuradhapura, Puttalam, Trincomalee and other areas.

UNHCR and the ICRC have the largest capacities and maintain the largest programmes in the conflict affected areas. Among international NGOs, CARE and MSF (France and Holland) have the biggest operations. UNHCR has four field offices located in northern Sri Lanka (Jaffna, Madhu, Mallavi and Vavuniya), one field office in the East at Trincomalee, and the Branch Office in Colombo. Since the field offices in Madhu and Mallavi are located in LTTE-controlled areas of the Vanni, UNHCR is in a unique position to liaise with both the Sri Lankan local authorities as well as with the LTTE.[121] UNHCR has been successful in this aspect of its role by virtue of its impartiality in the conflict.

[121] In December last year, UNHCR obtained the consent of the LTTE for the visit to the "uncleared areas" of the Vanni, two high ranking government officials, namely, the Chairman of the Presidential Task Force on

At the same time, given the severe restrictions placed by the Ministry of Defence on various essential items allowed into LTTE-controlled areas, UNHCR's contributions impact positively on the situation of IDPs in these areas by not only providing them with essential relief items but also enabling them to have some form of self-sufficiency activities. UNHCR's presence in LTTE-controlled areas helps discourage excesses on the part of the LTTE, such as forced recruitment. In the course of last year, UNHCR, together with the FAO, UNDP, UNPF, UNICEF, and WFP, signed a letter of intent with the Sri Lankan authorities to help 10,000 families settle in the peninsula.

UNHCR's activities in Sri Lanka seek to achieve two basic objectives: i) protect and stabilise internally displaced populations so as to reduce the need for further flight, and ii) promote durable solutions for internally displaced persons.

Protection and Stabilisation of displaced populations

UNHCR seeks to protect internally displaced persons through a series of community-based assistance projects which are small-scale and of a 'quick-impact' nature ('micro-projects'). Such projects are intended to help stabilise the displaced populations by providing them with the means to a basic livelihood; thus the projects are designed to address basic needs such as, water supply, food distribution, health care, education, and income-generation. UNHCR's field presence and access to the displaced populations, especially in the 'uncleared areas' allows it to monitor the overall well-being of such persons and assess needs in collaboration with its implementing partners.

UNHCR also seeks to achieve better protection of internally displaced persons through 'open relief centres' (ORCs). The concept of ORCs was developed in the early 1990's as a protection tool, to provide areas where internally displaced persons may be able to obtain emergency relief supplies in an environment of relative safety. The safety of the ORC is based on verbal understanding obtained from both the government and the LTTE to abstain from military operations in these areas. Two ORCs were opened in Madhu and Palampiddy in the early 1990's in which UNHCR has a presence. Subsequently, other sub-ORCs have been opened as and when the situation warranted. There are currently some 20,000 beneficiaries in the ORCs.

UNHCR's protection role also extends to so-called government-run 'welfare centres'. These are centres in government-controlled areas ('cleared areas') where internally displaced persons moving out from the 'uncleared areas' are accommodated. Internally displaced persons move out of 'uncleared areas' for various reasons; among which the most common are, to return to Jaffna,[122] to escape security related problems or to avoid the general hardship faced in the 'uncleared areas' which generally suffer from the effects of the government's 'embargo'. The situation in the welfare centres in Vavuniya has deteriorated over the past years, due to overcrowding and the lack of basic amenities.

Humanitarian Disaster and the Commissioner General of Essential Services. This visit represents the first time since 1995 when there were contacts between the LTTE and senior officials of government who have direct contact with the President. The officials were able for the first time to interact with IDPs and observe the conditions in which they live. As a result of the visit, food rations, which had been greatly reduced middle of last year, were restored by some 50%. The two officials, facilitated by UNHCR, met with senior members of the LTTE and an agreement was reached to undertake a census of the population in the "uncleared areas".

[122] According to the U.S. Depatrment of State Report Sri Lanka Country Report for 1998, from October 1996 until December 1998, over 130,000 persons are estimated to have moved out of LTTE-controlled regions. According to latest government statistics, 57,166 persons have returned to Jaffna through Trincomalee and Mannar by ship.

Severe restrictions on movements out of the centres have caused extreme hardship to the inhabitants while the number of those who are unable to find a durable solution and who are therefore dependant on government assistance at the centres have increased. A Release Committee processes applications from individuals who wish to leave the Centres. The processing is based on restrictive criteria and could take time. In particular, those applying to move to the southern part of the country, including to Colombo, have to satisfy some onerous pre-conditions, including securing a surety who is a permanent resident in Vavuniya and who leaves his/her security pass with the authorities for the duration of the time the applicant is away. UNHCR has taken an active role in advocating with the authorities the fundamental right to freedom of movement, both in and out of the Centres and also in respect of travel to the South. UNHCR also works with the authorities towards improving the conditions in the welfare centres.

Promotion of durable solutions

The presence of UNHCR in areas of return and resettlement contribute to a climate of confidence-building which encourages return/resettlement, wherever this is possible within the context of ongoing hostilities. In the government-controlled areas ('cleared areas') of Vavuniya district, UNHCR assists the authorities in their efforts to resettle IDPs in their own land (resettlement) or in newly allocated lands (relocation). According to government statistics, during 1998, 323 families were resettled and 332 families were relocated with an additional 146 families who were partly assisted in 1997 also completely resettled during the year. UNHCR has contributed to such schemes in the form of complementary micro-projects which aim at reinforcing basic community infrastructures such as schools, access roads, health services and water supply systems. UNHCR's regular visitations to beneficiaries in such areas enable the monitoring of their well-being and interventions are taken up as and when appropriate.

At the same time, as the conflict shifted from Jaffna peninsula to the Vanni region in mid-1996, large numbers of internally displaced persons began returning to Jaffna. In the course of 1997 and 1998, UNHCR increased it activities in Jaffna as it seeks to promote durable solutions there. This is undertaken through micro-projects in areas such as road construction and repair, upgrading sanitation facilities, reinforcing health care and educational facilities, crop production, animal husbandry, fisheries, vocational training and micro-credit schemes. It is planned that in 1999, special micro-projects will benefit female headed or single-parent families, children, the disabled and low-income groups. UNHCR's presence in areas of return enable it to monitor the protection situation and to make appropriate interventions whenever it is necessary.

Unfortunately, due to the lack of transportation to Jaffna and the serious security risks entailed in crossing the lagoon, repatriation to Jaffna has been restricted and thousands are stranded in government welfare centres in Vavuniya or Trincomalee awaiting transportation. UNHCR is working in collaboration with the authorities and the LTTE to explore various possibilities for safe modalities of transportation to Jaffna.

The security situation in Jaffna continues to pose severe constraints on the daily livelihood of the local residents. On several occasions, UNHCR has had to intervene in situations that could have led to maltreatment of civilians. UNHCR seeks to actively promote with the security forces, a better understanding of human rights standards, as well to encourage reconciliation and improved relations between the security forces and the local population.

5.3. Assisting returnees from India

UNHCR had initially established its presence in Sri Lanka for the purpose of monitoring and assisting Sri Lankan refugees who repatriated to Sri Lanka during the time of the Indo-Sri Lankan Peace Accord. The repatriation was organised bilaterally between the two governments and UNHCR had no involvement in India with this exercise. This phase of the repatriation took place from 1987 through 1989. In 1992, UNHCR concluded an agreement with the government of India which enabled UNHCR to have a limited role in India to verify the voluntariness of the repatriation. Large-scale voluntary repatriation movements were resumed from 1992 through 1995, when the exercise was suspended due to renewed conflict in Sri Lanka. Altogether, some 100,000 persons repatriated during these two periods. The repatriates were transported to Mannar and Trincomalee from where they were assisted to return to their villages of origin. Areas where there were large numbers of returnees benefited from UNHCR's micro-projects. A number of repatriates were not able to return to their villages of origin due to security-related reasons; some of them remain in ORCs under UNHCR's assistance.

UNHCR believes that the current situation in Sri Lanka is not conducive to large-scale voluntary repatriation of refugees. However, UNHCR continues to facilitate a small number of individual refugees to return by air to Colombo. The process involves clearances from the various authorities in Tamil Nadu, after which UNHCR purchases air tickets for the refugees. It is reported that there is also a small number of spontaneous returnees to Sri Lanka by boat to Mannar Island. These numbered around 100 persons during 1998.

5.4. Monitoring return of rejected Asylum Seekers

UNHCR undertakes passive or indirect monitoring of rejected Sri Lankan asylum seekers returned from Switzerland. This is being undertaken at the request of both governments under a bilateral agreement signed between them in 1994 and extended subsequently at two-yearly periods until the year 2000. Under the agreement, UNHCR is to act as a "liaison" between the returnees and the two governments and to "assist in meeting particular problems encountered by the returnees". UNHCR does not undertake active monitoring of all cases of return, but checks on the situation, intervenes and promotes a solution whenever it is notified of any problems, particularly concerning arrival at the airport. Through UNHCR's passive monitoring role, procedures were worked out, which, to a large extent, overcame the problem of detentions at the airport for those who return with emergency travel certificates. The procedures enabled such returnees to enter and travel safely in the country. In the course of 1998, a total of 173 persons were returned under the bilateral Swiss-Sri Lankan agreement.

In addition to the above, UNHCR also informally assists the Governments of Denmark and the Netherlands, at the latters' requests, to check on rejected asylum seekers who are returned under the framework of bilateral agreements which they have reached with the Sri Lankan authorities. UNHCR also receives information regarding returnees from Norway.

UNHCR is of the view that Sri Lankan asylum seekers, whose claims have been processed through full and fair procedures and found not to fulfil the refugee criteria may be returned safely to Sri Lanka (this does not obviate other reasons for non-return such as is contemplated under the Torture Convention). Where the individual has no valid travel documents, he/she should be assisted to obtain relevant documentation from the nearest Sri Lankan diplomatic post as such documents will greatly facilitate the person's arrival, travel and stay upon return to the country.

5.5. Challenges and Prospects

The ethnic conflict in Sri Lanka has gone on for decades. Despite recent efforts by President Kumaratunga to secure support for the devolution package, peace negotiations with the LTTE have not moved forward and militancy has prevailed. The crisis has affected without exception, all levels of Sri Lankan society and further widened ethnic and religious divisions. In a speech in 1995, the President highlighted that the civil war has impeded the progress of the nation as a whole, reversing its development efforts, increasing inflation and the cost of living, exacerbating the problem of unemployment and eroding investor confidence.[123] The President, significantly emphasised that democratic values and basic human freedoms have also been endangered by the war.[124] The challenge is to overcome and reconcile ethnic and religious differences, and to find a way forward to a satisfactory compromised political settlement which meets the interests of all parties concerned. Post-conflict reconstruction and rehabilitation for war ravaged areas would also constitute important challenges.

As long as the armed conflict prevails, however, human rights violations and population displacement will continue to pose significant problems. Effective protection of individuals in need of international protection and reinforcing national protection by the Sri Lankan authorities, will remain daunting challenges. UNHCR will continue to play its vital role between the LTTE and the government to meet emergency needs of displaced populations and seek improvement in the overall situation of the internally displaced in 'uncleared areas'. In the 'cleared areas', the challenge will be to support government efforts toward finding durable solutions, in particular, promoting durable return. UNHCR will continue to work toward enabling the returnees to have a more secure and stable livelihood which will sustain their return.

[123] "War or Peace In Sri Lanka", by T.D.S.A. Dissanayaka, Swastika (Private) Ltd. Colombo; p.140.
[124] Ibid.

Bibliography

Amnesty International, News Release - ASA 37/05/99, 10 February 1999

_____, Annual Report 1998: Sri Lanka, London, 1998

_____, News Release , ASA 37/23/98, 3 September 1998

_____, Urgent Action, Torture - ASA 37/19/98, 6 August 1998

_____, Sri Lanka: Government' response to widespread "disappearances" in Jaffna, November 1997

Bastiampillai, B., "Sri Lankan refugees in Tamilnadu: Trouble in the host", Colombo, 1994

Canada-Asia Working Group, "Human Rights in Asia. Submission prepared for the 52nd Session of the United Nations Commission on Human Rights", Geneva. 18 March-26 April 1996

_____, "Currents", December 1995 / January 1996, Toronto. January 1996

CNN Interactive, "Sri Lanka says it misinformed public on mass grave", 18 February 1999

Daily News, "Parents wailing, weeping and pleading as LTTE drags children away ", 3 November 1998

_____, "LTTE drive to conscript school children", 20 October 1998

_____, "LTTE bomb kills Jaffna Mayor, Brigade Commander and 10 others" 12 October 1998

_____, "Heavy LTTE casualties as attack on Kilinochchi repulsed-Jayasikuru troops consolidating at Mankulam", 5 October 1998

_____, (Colombo),"India should help in finding peaceful solution, says GL - Sri Lanka keen to have dialogue with LTTE", 1, 2 September 1998

_____, "Troops destroy LTTE base complex at Sampoor in Trincomalee", 1 September 1998

Dissanayaka, T.D.S.A., Swastika (Private), "War to Peace in Sri Lanka", Colombo, 1995

Economist Intelligence Unit, (EIU) Country Profile, Sri Lanka, 1998-99

_____, Country Report, Sri Lanka, 4th quarter 1998

_____, Country Report, Sri Lanka, 1st quarter 1996

Far Eastern Economic Review, Asia: Sri Lanka 1997

Government of the Netherlands, Ministry of Foreign Affairs, Report on Sri Lanka, 24 July 1997

Gunasekara, S.L., "Tigers, "Moderates" and Pandora's Package", Colombo, October 1996

Gunaratna, Rohan, "Indian Intervention in Sri Lanka", South Asian Network on Conflict Research, Colombo, 1993

INFORM: Sri Lanka Information Monitor: Situation Report, Colombo, 1995-1996

_____, Special Dossier No. 2 on Devolution Package, 8 August 1996

Lankadeepa, "Plane disappears with 48 passengers in Jaffna", 30 September 1998,

McDowell, Christopher, "A Tamil Asylum Diaspora", Sri Lankan Migration, Settlement and Politics in Switzerland, Refugee and Forced Migration Studies, Vol. 1, Oxford, 1996

NGO Forum on Sri Lanka, March 1996, 3

Permanent Mission of Sri Lanka to the UN in Geneva, Sri Lanka News, February 1996, 4

Regional Surveys of the World: The Far East and Australasia 1999, "Sri Lanka". London, 1998

Report of the Ministry Ministry of Foreign Affairs, 24 July 1997

Reuters, 5 August 1998

_____, 4 August 1998

_____, 6 March 1998

_____, 7 February 1998

_____, 26 January 1998

Sri Lankan Foreign Ministry Bulletin, Sri Lanka News Update, Colombo, 19 March 1997

The Sunday Times, "Govt worried that food is going to feed LTTE", 15 November 1998

The Island, "Navy chief says convoys continue despite attacks-Lanka Muditha in Trinco with over 1000 civilians", 14 November 1998 28 October 1998

_____, "Jaffna air traffic ban to continue", 10 November 1998

_____, "Dy. Indian High Commissioner visits Batticaloa", 5 November 1998

_____, "Devolution package an eye wash - TULF to withdraw support to government? ", 3 November 1998

_____, "The lifting of press censorship on war reporting a distant possibility", 2 November 1998

_____, "Ranil to President Chandrika-Stop waging war for political gains", 1 November 1998

_____, "Muslims run amok in Valachchenai after homeguard slaying", (Colombo), 10 February 1997

The University Teachers for Human Rights (Jaffna) (UTHR-J), "Jaffna: The contest between Man and the Beast within", Special Report No. 7, Colombo, 29 August 1996

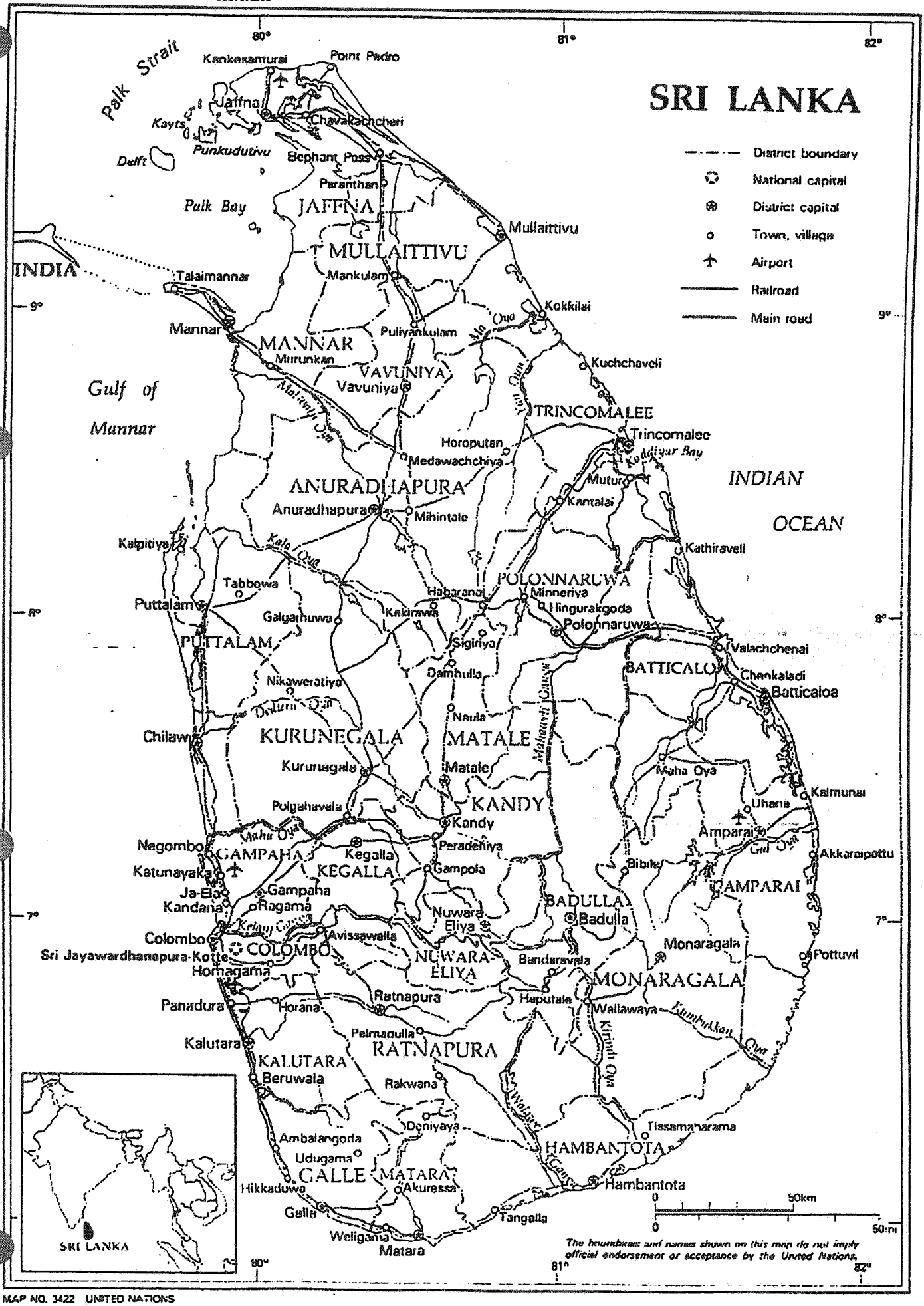
UN Economic and Social Council, Commission on Human Rights, Report by the Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions, 12 March 1998, E/CN.4/1998/68/Add.2

UNHCR, Assistance to Sri Lankan returnees and Displaced Persons in 1997: Report to the Government of Norway on UNHCR 1997 activities in Sri Lanka, Funding and Donor Relations Service, UNHCR, Geneva, January 1999

U.S. Department of State, Sri Lanka Country Reports on Human Rights Practices for 1998, 1999

Veerakesari, "Intense search operations in the North", 28 September 1998

ANNEX



MAP NO. 3422 UNITED NATIONS
DECEMBER 1986