

Security and Human Rights Situation, Entry and Exit Procedures and Personal Documentation

Fact finding mission to Sri Lanka

1 – 12 October 2001

Danish Immigration Service (DIS) and the Research Directorate of the Immigration and Refugee Board (IRB) of Canada

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Glossary

CHRD	Centre for Human Rights and Development
CID	Criminal Investigation Department, Sri Lanka Police
EPDP	Eelam People's Democratic Party
EPRLF	Eelam People's Revolutionary Liberation Front
FHD	Forum for Human Dignity
FRC	Family Rehabilitation Centre
HHR	Home for Human Rights
ICRC	International Committee of the Red Cross
IHR	Institute of Human Rights
LAF	Legal Aid Foundation
LTTE	Liberation Tigers of Tamil Eelam
NGO	Non-governmental organisation
NHRC	National Human Rights Commission
NIC	National Identity Card
PCUAH	President's Committee on Unlawful Arrests and Harassment (also known as Anti-Harassment Committee)
PLOTE	People's Liberation Organisation of Tamil Eelam
PTA	Prevention of Terrorism Act
RDF	Rural Development Foundation
SLA	Sri Lankan Army
SLP	Sri Lanka Police
SLR	Sri Lankan Rupee
TELO	Tamil Eelam Liberation Organisation
TID	Terrorist Investigation Department, Sri Lanka Police
UNHCR	United Nations High Commissioner for Refugees

Introduction

Background to the Mission

In order to support both Canada and Denmark's refugee determination systems through the provision of reliable, up-to-date information on refugee producing countries, the Danish Immigration Service (DIS) and the Research Directorate of the Immigration and Refugee Board (IRB) of Canada undertook a joint fact-finding mission to Sri Lanka between 1 and 12 October 2001.

Sri Lanka is an important source country of refugee claims for both Denmark and Canada. In Canada's case, it was the most important source country of such claims every year during the 1990s, and accounted for approximately 12 per cent of all claims made in Canada between 1994 and 1999. In Denmark, the annual number of asylum claims from Sri Lankan nationals has averaged approximately 125 over the last three years.

The aim of the mission was to update the report of the 1998 DIS fact-finding mission to Sri Lanka, and more generally to gather information on security, human rights and documentation-related issues as they pertain to the country's population in general, and Tamils in particular.

Although the majority of its time was spent in Colombo, the mission team also travelled to northern Sri Lanka, conducting interviews in both Vavuniya and Mannar.

Information was obtained from interviews with representatives of state authorities, Sri Lankan human rights organisations, foreign embassies and international organisations operating in Sri Lanka. Unless otherwise indicated, interlocutors provided information and opinions which were reflective of the situation in Sri Lanka during the first half of October 2001.

At the time of the fact-finding mission, one Canadian dollar was worth approximately SLR57.5, while one Danish kroner was worth approximately SLR11.1.

Methodology

In previous DIS fact-finding missions to Sri Lanka, some interlocutors requested anonymity for reasons of personal security or in the interest of safeguarding their relationship with Sri Lankan authorities.

Before each interview, participants were briefed on the purpose of the mission, and asked whether or not they would be willing to be cited by name for the information they provided. In a limited number of cases, participants provided information but did not wish their name and/or the name of their organisation to be identified in the mission report. Given that Canada's refugee determination system requires disclosure of the names of individuals whose information is used as evidence in refugee hearings, the Research Directorate did not use information provided under these circumstances. Instead, the Danish Immigration Service assumed responsibility for providing information in this report which was obtained from individuals or groups wishing to remain anonymous.

Unless otherwise stated, all of the information cited in this report was obtained from interviews carried out between 1 and 12 October 2001.

While planning the fact-finding mission, the Danish Immigration Service and the IRB Research Directorate agreed to terms of reference that would guide the information gathering activities of mission participants. These terms of reference are reproduced on pages 11-12.

Major Developments in the Armed Conflict and the Political Situation in Sri Lanka since December 1998

The following information is for the most part extracted from the United Nations High Commissioner for Refugees' *Background Paper on Refugees and Asylum Seekers from Sri Lanka*, published in June 2001.

For the past 18 years, Sri Lanka has been caught up in a civil conflict in which close to 64,000 people have lost their lives.¹ The immediate origins of the conflict lie in attempts by a Sinhalese dominated government in 1956 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 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.² The continuing armed conflict and a general rise in violence dominated Sri Lanka in the period 1999-2001.

Developments in the armed conflict 1999-2001

In early September 1999, the Liberation Tigers of Tamil Eelam (LTTE, Tamil Tigers) inflicted a series of defeats on the Sri Lankan Army in Mannar, and in October and November of the same year the LTTE regained control of large tracts of territory in the north-eastern Vanni district that state security forces³ had captured between 1995 and 1997.⁴

Fighting for control of land access to the northern Jaffna peninsula intensified in April 2000, as the LTTE, launching an offensive known as "Unceasing Waves III," stepped up efforts to secure more territory ahead of possible peace talks. The Elephant Pass causeway, which links the northern peninsula to the mainland, under state control since the withdrawal of the Indian Peace-Keeping Force (IPKF) in 1990, was captured by the LTTE in late April 2000, forcing 40,000 troops to retreat further into the Jaffna peninsula.⁵

By mid-June 2000, the LTTE advance, buoyed up by the capture of Elephant Pass, had lost its early momentum, and it was forced to withdraw from some of the areas it had occupied. However, on 29 September 2000, it was reported that the LTTE had regained some lost ground.⁶

¹ UNHCR. June 2001. *Background Paper on Refugees and Asylum Seekers from Sri Lanka*, p. 7.

² *Ibid.*, pp.7-8.

³ In this report, the term "state security forces" is used to denote members of the police, army, navy and air force.

⁴ *Ibid.*, p. 9.

⁵ *Ibid.*

⁶ *Ibid.*, p. 11.

In December 2000, the Sri Lankan Army began an offensive on the Jaffna peninsula in an attempt to recapture Elephant Pass from the Tamil Tigers. The offensive continued throughout the first months of 2001.⁷

A unilateral ceasefire declared at the end of 2000 by the LTTE was ended on 24 April 2001 in the face of the government's continued refusal to reciprocate and its continued attacks on the Tamil Tigers.⁸

On 25 April 2001, state security forces launched Operation "Agni Khela" (Ray of Fire), reportedly a pre-emptive strike against the LTTE in case the rebels had used the ceasefire as an opportunity to rearm and regroup. The offensive was also said to be aimed at weakening the Tamil Tigers in order to compel them to enter peace talks without setting further conditions. However, security forces underestimated the Tamil Tigers' strength, and ended the operation a few days later, after suffering a large number of casualties.⁹

As of June 2001, the LTTE controlled part of the Jaffna peninsula, except for Jaffna Town, along with parts of the Vanni district and Eastern Province. While the Jaffna peninsula is almost entirely inhabited by ethnic Tamils, they constitute only one-third of the population in the Vanni and Eastern Province, coexisting in these areas with Sinhalese and Muslims.¹⁰

According to the Economist Intelligence Unit, the 24 July 2001 attack by suspected members of the LTTE on Sri Lanka's only international airport, Colombo's Bandaranaike International Airport, as well as the adjacent military airport, Katunayake Air Base, seriously depleted the fleet of SriLankan Airlines as well as destroying several military planes.¹¹ The attack reportedly had debilitating effects on tourism and the business climate in general besides having a significant economic impact, as the loss of civilian and military aircraft alone was estimated at SLR30 billion.¹²

The Political Situation

After surviving an assassination attempt, Chandrika Kumaratunga was re-elected for a second term in the December 1999 presidential election.

The government's efforts to introduce constitutional reforms aimed at resolving the ethnic conflict were shelved in August 2000 after it failed to muster the required two-thirds majority in parliament, and President Kumaratunga called an election for October 2000 more than a year ahead of schedule, ostensibly to seek a fresh mandate to break a political deadlock that prevented the adoption of a new constitution. The proposals included a devolution package as a basis for a political solution to the conflict with the LTTE.¹³

⁷ Ibid., p. 13.

⁸ Ibid.

⁹ Ibid., p. 14.

¹⁰ Ibid.

¹¹ Throughout the report, interlocutors refer variously to the site of the 24 July 2001 attack as Katunayake Air Base, Bandaranaike International Airport or the Colombo airport. In all cases, these references refer to the same incident.

¹² Economist Intelligence Unit. August 2001. Country Report, p.7.

¹³ UNHCR. June 2001. *Background Paper on Refugees and Asylum Seekers from Sri Lanka*, p. 9.

In the parliamentary elections of October 2000, no party won an overall majority. The People's Alliance (PA) formed a new government in coalition with the Eelam People's Democratic Party (EPDP) and the National Unity Alliance, a breakaway faction of the Sri Lanka Muslim Congress.

In July 2001, the *Sri Lanka Monitor* reported that the ruling People's Alliance coalition had lost its parliamentary majority in July 2001 following the defection from its ranks of some members of the Sri Lanka Muslim Congress. After this, President Kumaratunga prorogued parliament on 10 July for two months to prevent a non-confidence vote from taking place.¹⁴

The *Sri Lanka Monitor* added that a State of Emergency, reintroduced on 24 October 1994 under the Public Security Ordinance of 1947, remained in force throughout the country until July 2001. Under the law, the State of Emergency must be approved by parliament every month. Because it lacked a majority in parliament, the government did not submit a motion to extend of the State of Emergency on 6 July 2001, allowing it to lapse, which rendered the Emergency Regulations void as of 6 July 2001.¹⁵

On 10 October 2001, President Kumaratunga dissolved parliament to avoid another non-confidence vote, scheduling general elections for 5 December 2001.¹⁶ In these elections, the opposition United National Party (UNP) won 109 seats in parliament.¹⁷ Lacking the necessary majority to form a government on its own, the UNP entered into a coalition with the Sri Lanka Muslim Congress, and on 9 December 2001 the UNP leader, Ranil Wickramasinghe, was sworn in as prime minister.¹⁸ The Tamil National Alliance (TNA), a coalition established in advance of the elections by four Tamil political parties, "swept the polls in the northeast, winning 14 seats in parliament."¹⁹ The TNA's electoral platform included a commitment to pursue peace negotiations with the LTTE and achieve self-determination in Tamil-dominated areas of the country.²⁰ The December 2001 election results do not affect the position of the president, who is elected separately and whose six-year term in office does not expire until 2005.²¹

The Peace Process

In February 2000, the Norwegian government accepted a request from President Kumaratunga and the LTTE to serve as mediator between the opposing parties and appointed Erik Solheim as its peace envoy. However, peace negotiations did not make much progress, mainly because both sides were unable to agree on preconditions for the commencement of talks.²² The LTTE demanded an end to hostilities, the lifting of the legal ban imposed on it and the lifting of what it considers an economic embargo on the war-affected areas. For its own part, the government refused to agree to a ceasefire until such time that talks were actually underway.

¹⁴ *Sri Lanka Monitor*. July 2001. Briefing July 2001.

¹⁵ *Ibid.*

¹⁶ *Sri Lanka Monitor*. October 2001. Briefing October 2001.

¹⁷ Sri Lanka Department of Information. 7 December 2001. "Parliamentary General Election 2001: All Island Result."

¹⁸ British Broadcasting Corporation. 9 December 2001. "Sri Lanka's New PM Sworn in. 9 December 2001."

¹⁹ *Far Eastern Economic Review*. 20 December 2001. "Try Again: Election Results Bring in a Pro-business Government and the Return of the Tamil Tigers to Parliament."

²⁰ *Sri Lanka Monitor*. October 2001. "Briefing October 2001."

²¹ *Ibid.*

²² UNHCR. June 2001. *Background Paper on Refugees and Asylum Seekers from Sri Lanka*, p.14.

While the peace process was effectively suspended in the run-up to the December 2001 elections,²³ the new government agreed to observe a ceasefire called by the rebels on 24 December 2001, as well as easing its economic embargo on LTTE-controlled territory.²⁴ In January 2002, LTTE and Norwegian negotiators met for talks in London, after Norway agreed to resume its role as a peace mediator.²⁵

²³ *Sri Lanka Monitor*. October 2001. "Briefing October 2001."

²⁴ British Broadcasting Corporation. 3 January 2002. "Sri Lanka Wants Ceasefire Strengthened."

²⁵ *Ibid.* 4 January 2002. "Sri Lanka's Tigers Start Talks."

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

I. Security situation

1. Security situation in state-controlled territory
 - Current extent of state-controlled territory
 - Current strength of the LTTE and the conflict between the LTTE and the security forces
 - Recruitment by the LTTE
 - Role of the Tamil groups opposed to the LTTE (PLOTE, TELO, EPRLF)
2. Security situation (for Tamils) in Colombo
 - Registration requirements for Tamils resident in Colombo
 - Checkpoints and other checks on Tamils resident in Colombo
 - Tamils' risk of arrest while in Colombo

II. Human Rights Situation

1. General Human Rights Situation
 - Living Conditions for Tamils in Colombo
 - Situation and treatment of particular social groups
 - Educational and employment opportunities for Tamils in Colombo
 - Location, status of Tamil lodges in Colombo
2. Freedom of movement
 - Internal movement of Tamils displaced by the conflict
 - Location and status of welfare centres in Vavuniya
 - The pass-system, when travelling from Vavuniya to the South
3. Legal Safeguards
 - Conditions for and control of arrests
 - Availability of legal assistance
 - The occurrence of physical abuse/torture
 - Official and unofficial detention centres

- Disappearances

4. Government Appointed Committees mandated to monitor safety and security of Tamils

- National Human Rights Commission
- President's Committee on Unlawful Arrests and Harassment
- Inter-Racial Committee on Ethnic Harmony

III. Entry situation for returning Tamils

- Treatment of returnees after they leave the airport

IV. Departure situation

- Control arrangements at Colombo airport

V. Documentation

- Obtaining ID documents

I Security situation

I. 1 Security situation in state-controlled territory

I. 1.1 Extent of state-controlled territory

UNHCR distinguished between so-called cleared areas, under state control, uncleared areas, under LTTE control, and so-called grey areas; the latter being areas which are formally under state control but where the LTTE is also operating, particularly at night.

At the time of the fact-finding mission in early October 2001, the Defence Adviser of the British High Commission in Sri Lanka stated that while the Jaffna peninsula is largely considered to be a cleared area under the control of state security forces, the LTTE engages in intimidation and assassinations. Furthermore, land mines pose a serious danger to civilians in the Jaffna peninsula.

UNHCR stated that the forward defence line (FDL) between cleared and uncleared areas in the Jaffna peninsula lies to the north of Kudarappu, and to the south of Eluthumadduval and Kilali. According to UNHCR, the FDL in this area is relatively well-defined, reportedly with trenches and fortifications established by both sides. UNHCR added that there is a de facto night-time curfew in Jaffna Town.

Similarly, the British Defence Adviser stated that the border between state- and LTTE-controlled areas in Jaffna lies south of Eluthumadduval. In the absence of a land route between Jaffna and the rest of the country, supplies are transported by air and by sea. According to the British Defence Adviser, the sustainability of Jaffna is a high priority for the government, with substantial resources allocated to the region. Furthermore, a large number of army commanders are stationed in the area.

UNHCR further indicated that the LTTE controls most of the Vanni region. To the west of Vavuniya, the border between LTTE- and state-controlled areas is relatively clear and lies to the north of the Vavuniya-Mannar road. However, the border becomes less clear in the coastal region near the Mannar causeway, according to UNHCR. While there is no curfew in Mannar Town, UNHCR indicated that local people generally stay off the streets after dark. To the east of Vavuniya, there is a less well-defined “border” between the opposing sides.

Like UNHCR, the Government Agent in Vavuniya indicated that much of the Vanni region is under LTTE control, including the Districts of Kilinochchi and Mullaitivu, along with parts of Vavuniya and Mannar, encompassing a population of roughly 60,000. According to the Mannar Government Agent, Mannar district is considered a cleared area with the exception of Mantai West and parts of Madhu.

UNHCR indicated that the “border” between cleared and uncleared areas is somewhat ill-defined between Vavuniya and Trincomalee. Trincomalee Town is under state control; in some of the surrounding areas there appears to be considerable LTTE infiltration (grey areas). According to UNHCR, there are some areas under LTTE control along the east coast south of Trincomalee,

including areas around Batticaloa, Kalmunai and Ampara. UNHCR added that there appears to be movement of LTTE cadres between eastern areas and northern areas under LTTE control.

The British Defence Adviser also stated that the LTTE is active in the east of the country, from Trincomalee in the north to Ampara in the south. In these areas, state security forces generally prevail by day, the LTTE by night. The British Defence Adviser also indicated that significant pressure has been building in the East since April 2001, adding that the situation in Batticaloa, which has considerable strategic value, is "pretty unhealthy." The Executive Director of INFORM claimed that there has been an intensification in LTTE intimidation of non-governmental organisations (NGOs) operating in the Batticaloa area in recent months. In particular, she noted that the LTTE appears to be engaged in attempts to increase its influence over NGOs in this region.

The British Defence Adviser indicated that the LTTE is operating at three levels: at a conventional level in the North (i.e. Vanni); at the level of an insurgency in the East and as a terrorist movement elsewhere. An important element in the LTTE's strategy involves the establishment of sizeable bases in uncleared areas in jungle regions, which are then used to launch attacks by small operational units. This strategy has been employed in both Batticaloa and Ampara.

The British Defence Adviser further stated that there appears to be an understanding that Colombo is off-limits to large-scale LTTE attacks at the present time. However, he indicated that the movement likely maintains an intelligence and operational network which has the capability of targeting specific individuals anywhere in the country.

In areas under its control, the British Defence Adviser indicated that the LTTE raises funds by assessing taxes through a variety of means, including (but not restricted to) salaries; by demanding licensing fees for tractors; and by hijacking, kidnapping for ransom, and stealing fishing vessels.

I. 1.2 Strength of the LTTE and the conflict between the LTTE and the security forces

UNHCR noted that there had been a decline in the intensity of the conflict between late 2000 and early 2001, potentially as a result of the emerging peace process and the declaration of a unilateral ceasefire by the LTTE. Following the suspension of the ceasefire by the LTTE in April 2001, state security forces initiated a new offensive in the North, Operation "Agni Khela," which caused significant loss of life and injuries on both sides.

According to the Executive Director of INFORM, the LTTE is believed to have a force of roughly 8,000 fighters. She added that the movement's strength rests on its well-trained cadres and highly developed network of supporters.

While the British Defence Adviser indicated that no accurate assessment of LTTE strength is available, he estimated that its fighting force is composed of approximately 4,000 active cadres, including men, women and teenagers. Of these, roughly 2,000 are based from the forward defence line northwards, 1,000 in the Vanni, and 1,000 in eastern regions of the country. The LTTE is currently engaged in the movement of some of its cadres from the North to the East, which is also being used as a training ground for new recruits, according to the British Defence Adviser.

In the view of the British Defence Adviser, there have been at least three significant events in the conflict in the North and East of the country since the suspension of the LTTE's ceasefire.

The first significant event took place on 24 April 2001, the day the ceasefire ended, and involved a four-day offensive by state security forces in Jaffna known as Operation "Agni Khela." The operation was unsuccessful, resulting in more than 1,000 casualties and approximately 300 deaths among state security forces and no territorial gains. The lack of success also had a negative impact on army morale.

The second significant event was the 24 July 2001 assault by the LTTE on Katunayake Air Base, adjacent to Bandaranaike International Airport. Well-planned and executed, the attack had a significant impact on both the country's economy and on the air force's capacity to strike against the LTTE in the North. Furthermore, in recent months there has been an increase in LTTE efforts to enforce a sea-based interdiction of Jaffna. These efforts are reflected in an upsurge of incidents at sea involving the LTTE and Sri Lankan naval forces.

The third significant event was the assassination of an LTTE commander known as Colonel Shankar on 26 September 2001. Shankar, a close friend of LTTE leader Velupillai Prabhakaran, was killed by a claymore mine in an area under LTTE control in the North of the country. According to the British Defence Adviser, although there has been no claim of responsibility for the killing, it was anticipated that the LTTE would seek retribution for the attack.

In the view of the British Defence Adviser, because the LTTE is currently enjoying considerable military success, its leaders do not appear genuinely interested in pursuing a negotiated settlement to the conflict. Additionally, they question the sustainability of the present government, leading them to adopt a "wait and see" approach. The British Defence Adviser also claimed that the LTTE has become increasingly sensitive to public opinion in recent years, and that it does not consider the destruction of the country's economy to be in its long-term interests.

I. 1.3 Recruitment by the LTTE

UNHCR indicated that the LTTE is engaged in a significant recruitment campaign, including the recruitment of children from schools and vulnerable groups such as orphans or children living in foster families. Other interlocutors, namely the British Defence Adviser and representatives of the Family Rehabilitation Centre (FRC), INFORM, the Institute of Human Rights (IHR) and the Centre for Human Rights and Development (CHRD), stated that the LTTE is currently involved in large-scale recruitment in eastern regions of the country. The British Defence Adviser noted that the movement has more suicide cadres than it can train.

The CHRD Coordinator stated that LTTE recruitment is increasing in the regions of Batticaloa and Ampara, and that some young people are joining the movement in order to "feel safe." The Coordinator added that posters have appeared in Batticaloa in the past two or three months asking each family to enlist one child in the LTTE.

Similarly, the lawyer with the Institute of Human Rights indicated that the LTTE is demanding that families living in eastern regions of the country each provide one child for recruitment. He added that he is aware of one case in which the LTTE destroyed a family's tractor after they refused to allow any of their children to enlist. According to the treasurer of the Forum for Human Dignity (FHD), there have been "some" cases of children being abducted by the LTTE on their way to or from school.

The Executive Director of INFORM claimed that the LTTE has threatened teachers and parents who attempt to stop its recruiters from entering schools in the Batticaloa region. The Executive Director further stated that she is aware of a number of instances in which children have fled LTTE training camps and returned to their homes without incurring any punishment or retaliation.

As a result of the LTTE's recruitment activities, the FHD treasurer indicated that approximately 60 families have moved in recent months to Batticaloa from uncleared areas in order to protect their children from recruitment pressures. The Administrator of the Family Rehabilitation Centre claimed that some families have sought to move their children to Colombo or, if they are sufficiently wealthy, to locations abroad in order to prevent them from being recruited by the LTTE.

UNHCR indicated that the recruitment of children by the LTTE appears to have been increasing in 2001, and particularly in the months following July. UNHCR stated that in February 2001 both it and UNICEF reached an agreement with the LTTE in which it reconfirmed its commitment not to recruit individuals under 17 years of age. While the agreement provided for UNHCR and UNICEF monitoring of schools and the registration of children in educational establishments. UNHCR indicated that both UNHCR and UNICEF personnel faced difficulties in carrying out the project, including gaining access to schools. According to UNHCR, the declaration on 4 August 2001 of a security alert in the Vanni area by the United Nations Security Coordinator (UNSECOORD) has led to the temporary cessation of UNHCR program activities.

The lawyer with the Institute of Human Rights stated that he was not aware of any recent reports of elderly individuals being recruited by the LTTE. However, the lawyer added that the LTTE is providing training to older people, particularly in the region of Batticaloa, so that they might serve as "home guards" in areas under its control. According to UNHCR, recruitment of elderly persons appears limited to service in "border control units." This has been going on for some time.

Furthermore, the treasurer of the Forum for Human Dignity stated that while LTTE recruitment activities are focussed on children, other individuals, including the elderly, are required periodically to undertake two or three days of volunteer labour. Individuals can either perform this work themselves, or pay someone else to do it on their behalf.

According to the Executive Director of INFORM, Mannar District is also an area in which LTTE recruitment is occurring. The Executive Director further stated that this includes both forced and voluntary recruitment.

The Executive Director of the Family Rehabilitation Centre claimed that there has been a decrease in recruitment in the Jaffna region, as a result of the firm control exercised by state security forces in this area.

I. 1.4 Role of Tamil groups opposed to the LTTE (PLOTE, TELO, EPRLF, EPDP)

The Executive Director of the Family Rehabilitation Centre (FRC) characterised the Tamil paramilitary groups which oppose the LTTE as "political parties with military wings." He added that it is very difficult to assess the extent to which the Tamil groups enjoy popular support, since few people living in northern or eastern regions of the country actually vote in elections.

The Defence Adviser of the British High Commission indicated that the relative power of Tamil paramilitary groups, including whether or not they are permitted to carry arms, varies according to

the prevailing political situation but they are weaker at the present time than they have been in previous years.

While UNHCR was not aware of any increase in the activities of anti-LTTE Tamil groups in 2001, it indicated that such groups, including the People's Liberation Organisation of Tamil Eelam (PLOTE) and Tamil Eelam Liberation Organisation (TELO), continue to operate, particularly in the Vavuniya region, where they are also engaged in some recruitment of members. According to UNHCR, these groups remain armed.

Similarly, the Coordinator of the Centre for Human Rights and Development (CHRD) stated that members of Tamil paramilitary groups remain armed in northern and eastern regions of the country. The Coordinator also indicated that TELO may be characterised as "soft" towards the LTTE and strongly anti-government, while PLOTE has adopted a hardline anti-LTTE position.

The Executive Director of INFORM claimed that Tamil paramilitary groups have been implicated in human rights abuses in regions where they are active. The Executive Director added that a key challenge in bringing these groups under control is the fact that the justice system has thus far been unable to hold them accountable as organisations.

Both INFORM's Executive Director and the FRC Administrator indicated that civilians living in the North and East are as much under pressure from Tamil paramilitary groups as they are from the LTTE and state security forces.

Activities in the North and East

A number of interlocutors, namely representatives of the CHRD, INFORM and Institute of Human Rights (IHR), stated that Tamil paramilitary groups active in Vavuniya include PLOTE and TELO.

The Administrator of the Family Rehabilitation Centre claimed that Vavuniya-based paramilitary groups are involved in the sale of travel passes and allocation of land at sites where displaced persons are being resettled.

Furthermore, the Executive Director of INFORM claimed that PLOTE has been involved in the perpetration of abductions, torture and extortion in the Vavuniya region.

In the view of the CHRD Coordinator, paramilitary groups operating in Jaffna consist principally of the Eelam People's Revolutionary Liberation Front (EPRLF) and PLOTE. The Coordinator indicated that all of the Tamil paramilitary groups are active in Mannar, Trincomalee and Batticaloa.

The First Secretary of The Netherlands Embassy, along with representatives of Home for Human Rights (HHR), the Forum for Human Dignity and the Family Rehabilitation Centre, stated that there is cooperation between Tamil paramilitary groups and security forces. For example, the Administrator of the Family Rehabilitation Centre claimed that the groups are "to a certain extent" involved in the screening of individuals crossing into cleared areas at Piramanalankulam, and that both PLOTE and TELO personnel are stationed at army checkpoints in Vavuniya. Furthermore, the First Secretary was of the opinion that Tamil paramilitary groups are working very closely with the Sri Lankan Army in both Batticaloa and Trincomalee.

In the view of the HHR Executive Director, Tamil paramilitary personnel are operating under the direction of state security forces. To support this assessment, the Executive Director referred to a

court case in 2000 in which an individual won compensation from the state after being mistreated by TELO. In her view, this verdict amounted to an acknowledgement by the court that the group was operating under state control.

However, interlocutors from both the Family Rehabilitation Centre and the CHRD stated that although there is cooperation between the Tamil groups and the security forces, their relationship is also characterised by a degree of friction.

The Commissioner of the National Human Rights Commission (NHRC) indicated that the security forces used to work very closely with the Tamil paramilitary groups. However, there is less cooperation because of a decline in the groups' political power.

Activities in Colombo

According to the NHRC Commissioner, all of the Tamil paramilitary groups have offices in Colombo. The CHRD Coordinator indicated that PLOTE, TELO and EPRLF are present in Colombo. Furthermore, the Executive Director of INFORM claimed that the Eelam People's Democratic Party (EPDP) engages in extortion in Colombo's Tamil neighbourhoods.

Interlocutors from INFORM and the CHRD stated that while members of the Tamil groups are generally not armed in Colombo, their leaders may carry weapons for self-defence. The FRC Administrator claimed that PLOTE's central compound, located on Park Road in Colombo, is guarded by armed men stationed in turrets, and that its members are allowed to carry weapons inside the compound grounds.

I. 1.5 Treatment of Tamils who speak out publicly in favour of the government or against the LTTE

In the view of the Executive Director of Home for Human Rights, the LTTE appears to tolerate the public expression of anti-LTTE sentiments by individuals having no public stature. As an example, she cited her recent involvement in a women's workshop in the Vanni region in which participants forcefully expressed anti-LTTE sentiments. However, she indicated that she is also aware of cases where individuals have been killed because of their anti-LTTE views, and that the movement's reaction in any given instance is likely to depend on the position and stature of the person expressing such a position.

According to the Executive Director of INFORM, Tamils who speak out publicly in favour of the government may experience problems. In particular, she cited threats received by Tamil politicians and activists associated with the University Teachers for Human Rights in Jaffna. As well, she referred to a recent case in which members of a women's organisation in Batticaloa critical of the LTTE have been threatened; the organisation may close down as a result of these threats.

I. 2 Security situation (for Tamils) in Colombo

According to UNHCR, the security situation for Tamils in Colombo remains difficult in general, especially for newcomers who often find it difficult to establish themselves. The general security situation in Colombo has not much improved between early 2000 and October 2001. UNHCR added that the situation is particularly difficult for Tamils, who often have no choice but to stay in hostels (also known as lodges) where searches are regularly carried out by the security forces. Such search operations increase periodically, for example after the occurrence of security incidents in

Colombo or whenever allegations emerge that individuals planning suicide attacks have infiltrated the capital. UNHCR pointed out that in August and September 2001 the security situation in Colombo (and nearby Negombo) appeared to be still affected by the attack on the Katunayake Air Base in July 2001. UNHCR also indicated that at the end of 2000 and the beginning of 2001 the situation had settled down somewhat, apparently due to the ongoing peace process and the unilateral ceasefire declared by the LTTE at the end of December 2000. However, UNHCR noted that after April 2001, following the suspension of the unilateral ceasefire by the LTTE and the subsequent launching of a new offensive in the North by state security forces, as well as after the attack on Katunayake Air Base in July 2001, tension increased.

The First Secretary of The Netherlands Embassy, the Coordinator of the Centre for Human Rights and Development (CHRD) and the Executive Director of Home for Human Rights (HHR) indicated that the security situation for Tamils in Colombo was closely related to the general security situation in the country. Specifically, the First Secretary of The Netherlands Embassy stated this to be true in relation to major LTTE attacks or if the security forces were on alert for increased threats to Colombo. The First Secretary pointed out that a combination of international and national conditions could also have an influence on the level of LTTE activities, as when the LTTE proscription was up for renewal in the United States in mid-October 2001. The First Secretary and the CHRD Coordinator both mentioned the period following the airport attack in July 2001. The First Secretary also pointed to the period following the LTTE's capture of Elephant Pass in 2000, as well as the 26 September 2001 incident in which Shankar, an LTTE commander, was killed by a mine in the North, consequently putting the security forces on alert for any threats to Colombo.

The CHRD Coordinator said that the security situation for Tamils in Colombo is unpredictable, adding that whenever there are rumours of LTTE attacks, the atmosphere changes and, according to the Coordinator, the situation in Colombo has been like that from 1993-1994 onwards.

The Executive Director of HHR noted that depending on the security situation in Colombo, the level of ethnic harassment and checks on Tamil people had remained the same over two or three years, but pointed out that after a "suicide kit" was found on 29 September 2001 close to a park where the President was due to attend a ceremony, the situation became more tense and more checks were conducted. The CHRD Coordinator also referred to increased tension following the 29 September 2001 incident.

I. 2.1 Registration requirements for Tamils resident in Colombo

Several interlocutors, namely UNHCR and representatives of the President's Committee on Unlawful Arrests and Harassment (PCUAH), Centre for Human Rights and Development (CHRD), Institute of Human Rights (IHR) and Home for Human Rights (HHR), pointed out that with the lapse of the Emergency Regulations in July 2001 there was no legal requirement for Tamils to register with the police, but the practice continues.

UNHCR stated that individuals are required to present a valid National Identity Card (NIC) in order to be registered with the police and, according to UNHCR, there have been improvements in obtaining NICs following the Department of Registration of Persons' establishment of a so-called Front Office in Colombo, which is reportedly working well and efficiently. People from the northern and eastern parts of the country can now apply for documents in Colombo. UNHCR also stated that the registration process has become easier for returned asylum seekers, with airport

procedures changed in 2000 to allow returnees to keep their emergency travel document when they leave the airport, thereby facilitating their application for new documents (also see page 66).

The First Secretary of The Netherlands Embassy stated that Tamils sometimes face problems registering with the police in Colombo, especially in some areas of the city, such as Bambalapitiya and Kotahena. At registration, permission to stay may be for a period of one month to a maximum of three months at a time, but the period varies from police station to police station and appears to be arbitrary.

Regarding initial registration in Colombo, the Forum for Human Dignity (FHD) treasurer stated that the police would often be reluctant to register people who approach them. The police would demand specific reasons for the person to be in Colombo, and the period for which the permission is given depends on the police officer and varies from one police station to another. The treasurer of the FHD stated that valid reasons to stay in Colombo would include medical treatment, seeking employment abroad and preparing to go abroad. Regarding the actual registration, normally a valid NIC and a travel pass, if the person comes from the northern areas, would be required. The treasurer also noted that while some police stations, for instance Borella, would also require photos, there are no specific rules. According to the treasurer, it is a landlord's obligation to register his or her tenants.

According to the PCUAH Chair, there have been problems related to the lack of a unified procedure for police registration. In particular, the Chair was aware of difficulties with registration in Malliwate and Bambalapitiya, in the northern areas of Colombo. The Chair stated that the PCUAH had held meetings with the Officers-in-Charge in various police stations in Colombo to discuss unified guidelines and for the three months ending September 2001, the PCUAH had not received any complaints related to registration.

The Coordinator of the CHRD noted that the police generally are not aware of which registration regulations are in force. The Coordinator stated that he was still considered a tenant in Colombo after having lived there for 10 years and was still registering with the police on a regular basis. According to the CHRD Coordinator, only Tamils who own property in Colombo are not required to register. However, in practice, many Tamils with an address in Colombo still register to avoid confrontations with the police. The CHRD representative added that normally during checks at checkpoints and other checks on Tamils in Colombo, the security forces would demand to see a copy of the police registration, especially if the person comes from northern areas such as Jaffna, Vavuniya and Mannar.

According to the CHRD Coordinator, police registration is especially difficult for newcomers, who normally receive permission to stay in Colombo for 15 days or perhaps one month. The Coordinator said that police registration in Colombo is sometimes difficult for Tamil people coming from the northern areas to Colombo for medical treatment among other reasons. The police in the northern areas would inform the Colombo police that an individual had to travel to Colombo for 15 days or one month, and the Colombo police would follow up with checks in the Tamil quarters of Colombo.

The Executive Director of Home for Human Rights and an HHR attorney stated that all Tamils are required to register, including those who have lived in Colombo for many years. Although landlords are supposed to register their tenants, it is the tenants rather than the landlords who would be subject to police suspicion when there are checks. The HHR Executive Director added that the police

undertake routine checks in certain areas of Colombo, with the number of checks dependent on the neighbourhood in question. As well, she noted that police officers regularly visit Tamil lodges to ensure that individuals whose police registration has expired have in fact left Colombo.

The Executive Director of HHR also indicated that renewal of registration is required at different intervals, with length of allowable stay dependent upon a number of factors, including individuals' socio-economic status. In general, individuals are given two weeks, followed by an extension of three months and then an extension of up to one year. There must be a valid reason to renew the registration, but according to the Executive Director of HHR it is not clear what constitutes a valid reason. The Executive Director pointed to the case of a staff member from Mannar who has been staying in Colombo for one and a half years. The person could not renew her registration with the police in spite of showing an employment contract. After the intervention of a legal officer from HHR, the extension was given: in general, if people do not have access to legal assistance, they will face problems.

The CHR D Coordinator was of the view that without a valid reason, it would be difficult to obtain an extension. As an example, the Coordinator pointed to a case where a girl with a permanent residence in Mannar had come to Colombo to attend a course. She was given a maximum of two month's permission to stay in Colombo and had to return to Mannar three times for extensions before she completed her course.

The treasurer of the Forum for Human Dignity stated that people often approach his organisation for assistance in extending their registration with the police, and in most cases the police react positively to a request from the FHD, especially in some police stations where the organisation has a good relationship.

With regard to obtaining permission to extend their stay in Colombo, UNHCR stated that people in general do get their permission extended. Hostel owners assist with the application for such permission, often for a fee. UNHCR was not aware of any cases where returnees had been forced to go to their places of origin because they did not obtain an extension. The First Secretary of The Netherlands Embassy, like UNHCR, stated that when permission expires, an extension is normally given, adding that she was not aware of any cases where an extension had not been granted.

Several interlocutors, namely representatives of The Netherlands Embassy, CHR D, HHR and FHD, indicated that payment of a bribe may be necessary to facilitate the issuance of an extension, although the CHR D Coordinator added that failing to obtain an extension would generally not result in arrest. Furthermore, while the Forum for Human Dignity treasurer was aware of people working with the police who would ask for a bribe in return for an extension, he did not know of any recent reports on this issue.

I. 2.2 Checkpoints and other checks on Tamils resident in Colombo

UNHCR stated that there is a significant presence of security forces in the streets of Colombo, and there has been no visible reduction in the number of checkpoints or the number of checks occurring in Colombo over the last two to three years. The Coordinator of the Centre for Human Rights and Development (CHR D) estimated that 75 to 80 per cent of the checkpoints in Colombo are permanent, but new checkpoints are created depending on the security situation.

The Coordinator of the Anti-Harassment Committee (PCUAH) similarly stated that Tamil people are subject to checks in Colombo and in the war zones and that the PCUAH receives complaints related to harassment at checkpoints in Colombo, especially in the Tamil areas. As well, the Institute of Human Rights (IHR) lawyer stated that Tamil people in general are subject to harassment at checkpoints.

The Executive Director of Home for Human Rights (HHR) indicated that Tamil people are checked at checkpoints, especially in Tamil areas of Colombo, but also on buses and in other public places. The Executive Director noted that in the North and East the police may be rough and slap people at checkpoints, but in Colombo this is not taking place openly.

According to UNHCR, women in general and Tamil women in particular often face difficulties, including harassment at checkpoints. The First Secretary of The Netherlands Embassy pointed out that women could be more subject to being harassed at a checkpoint at night time but this was also due to the fact that both Sinhalese and Tamil women normally do not move around on their own after dark. The First Secretary of The Netherlands Embassy referred to a case in June 2001 in Maradana in Colombo where a Tamil woman had been picked up from her house and allegedly raped by police officers after having passed a checkpoint at night. According to the First Secretary, this rape case can be characterised as an exceptional incident. The First Secretary added, however, that similar cases had been reported in Jaffna, and that there had been an incident in Mannar in 2001 in which two women were raped by navy officers after being picked up at a checkpoint.

Both the Executive Director of INFORM and the IHR lawyer also referred to the rape incident in Maradana, noting that a number of police officers were arrested in connection with this case.²⁶ The INFORM representative further stated that she had heard many stories of harassment of women in Eastern Province, but said that such harassment was rare in Colombo, where police have become more cautious after the Maradana incident. However, the IHR lawyer took the view that many parents who fear for their daughters' future and possibility of getting married are not reporting incidents which take place at checkpoints.

The First Secretary of The Netherlands Embassy was of the opinion that the treatment of individuals at checkpoints or during checks is arbitrary and depends on the officer on duty and the time of day.

UNHCR stated that cordon and search operations are carried out in areas of Colombo with a predominant Tamil population seemingly on a fairly regular basis; such operations are often carried out in the early morning. With regard to house searches in Colombo, the Anti-Harassment Committee Coordinator indicated that the PCUAH has intervened with the security forces and arranged that no house searches should be carried out between 6 p.m. and 6 a.m. However, the treasurer of the FHD stated that these instructions were not being followed.

²⁶ Of six individuals arrested for their alleged involvement in the rape, only one remained in custody on 21 August 2001. All of the others had been released on bail (*Daily News*, 21 August 2001. "Maradana Checkpoint Case: Two Suspects Given Bail, One Re-remanded"). No information subsequent to 21 August 2001 could be found among the documentary sources consulted.

According to the HHR Executive Director, round-ups of Tamils follow security incidents during which 200 to 300 people may be detained, but most of them are released quickly (i.e. within 24 to 48 hours). She added that a small number of suspicious persons, for example those lacking an identity card or police registration, may be detained for a lengthier duration and later released by the court.

With regard to other checks occurring in Colombo, the First Secretary of The Netherlands Embassy agreed with the HHR Executive Director that the scale and intensity of checks were related to security incidents and the general security situation. The First Secretary referred to the July 2001 attack on the airport and mentioned that 600 Tamils had been rounded-up in Colombo afterwards. However, there appeared to be fewer arrests after this attack than was the case after other suicide attacks. The First Secretary also noted that many Tamils had been taken into custody after the murder of the Minister of Industry in June 2000. According to the First Secretary, most of them were released quickly; an unknown number of individuals remained in custody in October 2001.

The treasurer of the Forum for Human Dignity also indicated that cordon and search operations often take place in the Tamil quarters of Colombo depending on the general security situation and allegations of incidents.

Similarly, the CHRD Coordinator stated that cordon and search operations take place in the Tamil dominated northern regions of Colombo three to four times a year depending on the situation. According to the Coordinator, after the airport attack in July 2001 many cordon and search operations were conducted in the Tamil areas of Colombo and Negombo. Otherwise, the Coordinator stated that arrests would more often occur at checkpoints and on request of the Criminal Investigation Department (CID) or the Terrorist Investigation Department (TID) searching for specific persons.

In contrast with the views expressed by other interlocutors, the Executive Director of INFORM said that cordon and search operations in Colombo were a rare occurrence. The operations conducted immediately after the attack on the airport in July 2001 were, according to the Executive Director, not as massive as expected.

I. 2.3 Tamils' risk of arrest while in Colombo

According to UNHCR, Tamils are continuously faced with checks by the security forces in Colombo. Factors which may lead to arrest or detention of Tamils include improper documentation, i.e. no valid NIC and police registration. In addition, young Tamils around 16 years of age may receive particular attention from the security forces, especially if they come from the North and East, and may be subjected to interrogation at police stations. UNHCR indicated that the majority of people who are taken in are released within 24 hours, but some may be required to remain in custody for further investigation. UNHCR pointed out that Tamils who have family members in Colombo and/or who can confirm their identity and reason to be in Colombo are likely to be released sooner.

The First Secretary of The Netherlands Embassy indicated that police often appear to act in an arbitrary manner when arresting Tamils in Colombo, with such individuals' risk of arrest dependent upon a combination of factors including the general security situation. INFORM's Executive Director also stated that individuals' risk of arrest and detention at checkpoints depends on the

prevailing security situation, adding that she could not say whether there has been a change in the number of such arrests over the last two to three years.

The Director of the Criminal Investigation Department (CID) of the Sri Lanka police stated that the CID was in the process of establishing a central computerised registry of arrests with the assistance of the European Union. The system would also include a telephone service, which would allow people to call a telephone number to find out if a family member had been arrested. The Director expected the system to be operational by the end of October 2001. According to a government press release, a computerised registry of those arrested under the Prevention of Terrorism Act and Emergency Regulations was established on 1 November 2001.²⁷

Like UNHCR, the Forum for Human Dignity (FHD) treasurer stated that the risk of being taken in for further interrogation at a checkpoint or in connection with round-ups was related to the lack of proper documentation such as an NIC or police registration. If the person comes from the North or East, the lack of a valid reason for being in Colombo could be another factor. In this connection, the treasurer of the FHD emphasised that language problems at checkpoints in Colombo, where Tamil-speaking officers are rare, could lead to the detention of Tamil-speaking people. He added, however, that most police stations in Colombo would have at least one officer who speaks Tamil. According to the FHD treasurer, 90 to 95 per cent of people detained for further interrogation in connection with checks and round-ups in Colombo would be released within two to three days.

Both the FHD treasurer and the Institute of Human Rights (IHR) lawyer pointed out that generally Tamils with an identity card bearing an address in the North or East would be more targeted than Tamils with an identity card bearing a Colombo address. The IHR lawyer also underlined the language problem at checkpoints in Colombo as a factor which could lead to misunderstandings and detention of people for further interrogation at police stations.

The Home for Human Rights (HHR) Executive Director and the Coordinator of the Centre for Human Rights and Development (CHRD) similarly noted that a lack of a valid NIC or a police registration and not having a valid reason to be in Colombo could lead to suspicion and further interrogation. Both interlocutors noted that persons with an identity card bearing a Jaffna address would be more vulnerable and subject to suspicion than Tamils with a Colombo address. As well, the accent and physical appearance of the person could cause suspicion. In addition, the HHR Executive Director indicated that scars and behaviour are also factors that could raise suspicion. Like UNHCR, the Coordinator of the CHRD stated that young people would be more vulnerable to suspicion. The IHR lawyer indicated that there was no particular age group that was more subject to being detained or arrested than other groups – old people as well as young boys would be included; other factors leading to problems at checkpoints could include one's name, place of birth and accent. The CHRD Coordinator stated that the police have lists and photos of wanted persons. Finally, the Coordinator noted that Tamil-speaking officers are rarely at checkpoints in Colombo and persons who do not speak either Sinhala or English would be more vulnerable.

²⁷ Government of Sri Lanka. 8 November 2001. "Human Rights: Police Headquarters to Keep Tab of All Persons Arrested under PTA and ER."

The Executive Director of INFORM was of the opinion that the perception of who is a suspect depends on the police officer at the checkpoint, who often has his or her own ideas of the appearance of suspects. Young people and individuals with dark skin, as well as women deemed to be physically unattractive by checkpoint personnel, may be treated with suspicion. Similar to representatives of HHR and the CHRD, she stated that Tamil persons with an identity card bearing a Jaffna address would also be targeted. Muslims would not be a targeted group in Colombo, whereas Muslims living in the eastern regions of the country are subject to harassment. The Executive Director agreed with other interlocutors in that the number of arrests is closely associated with specific security incidents, and added that the length of detention of persons being picked up ranges from 24 hours to two weeks or more depending on the situation. If someone can intervene to confirm the identity of the detainee, he or she would be released quickly, otherwise the situation would be difficult. For example, she noted that Tamil staff from INFORM's office who had been taken in at checkpoints would be quickly released if the office intervened. Similarly, family members of detainees might contact a lawyer to intervene, and according to the Executive Director, lawyers would typically end up with 10 cases if they go and check on one person, as there is no system for the detainees to access a telephone to call someone for assistance.

II Human Rights Situation

II. 1 General Human Rights Situation

II. 1.1 Situation and Treatment of Particular Social Groups

The following discussion is limited to the situation and treatment of women, as the interlocutors were unable to provide any substantive information on other social groups, such as youth and elderly individuals.

The Executive Director of INFORM characterised the status of women in Sri Lanka as "fairly high" as compared to other Asian countries. They enjoy considerable mobility, and are able to travel by themselves. However, the Executive Director indicated that Tamil women in Colombo risk being victimised by men if they try to live completely independently, and that many choose to board with a family as a means of protecting themselves. In the view of the First Secretary of the Embassy of The Netherlands, women in general are fearful of going out at night by themselves.

Both the Executive Director of INFORM and the Commissioner of the National Human Rights Commission (NHRC) indicated that there has been an increase in the number of reported cases of violence against women in recent years. The NHRC Commissioner felt that this increase is largely due to a growing willingness of victims to report and of authorities to investigate such cases. However, the Executive Director of INFORM claimed that the actual number of attacks against women in general has increased significantly in the past three years. The Executive Director further indicated that she is aware of incidents in which armed forces deserters have been involved in attacks on women, citing reports of six women being killed by deserters in the past two years after refusing offers of marriage.

According to INFORM's Executive Director, the growth of the commercial sex industry in Sri Lanka, for example in Anuradhapura in the vicinity of army camps, has also led to increased victimisation of women.

The Executive Director of INFORM also stated that she is aware of a number of cases in which women have been attacked by members of a radical Muslim group operating in eastern regions of the country. This group, known as Jihad and which operates in areas south of Batticaloa, reportedly killed two women and shaved the heads of a number of others between 1999 and 2000. The Executive Director was not aware of any incidents involving this group in 2001.

II. 1.2 Living conditions for Tamils in Colombo

According to the treasurer of the Forum for Human Dignity (FHD), living conditions for Tamils in Colombo vary according to individuals' socio-economic status.

The First Secretary of the Embassy of The Netherlands stated that the country's health and educational systems are overloaded and experiencing difficulty in meeting demand. She added that a particular problem facing Tamils from northern and eastern regions is that they do not know how or where to access health and social services in Colombo. Furthermore, representatives of Home for

Human Rights (HHR) and INFORM indicated that language barriers are a significant problem for Tamils attempting to make use of health and social services in the Colombo area.

The FHD treasurer stated that he was not aware of any cases of discrimination against Tamils within the public health care system. He added that public hospitals are free and accessible to all, and that each hospital has one or two staff-members who can speak Tamil. However, interlocutors from INFORM and Home for Human Rights indicated that a lack of Tamil-speaking staff is a problem in the public health system. INFORM's Executive Director added that her organisation has received complaints from Tamil women who had trouble accessing health services for this reason.

According to the Executive Director of Home for Human Rights, while Tamils are not refused service in public hospitals, they do face discrimination. As an example, she claimed that Tamil patients would be the ones required to sleep on the floor should the hospital be over-crowded.

II. 1.3 Educational and Employment Opportunities for Tamils in Colombo

According to the First Secretary of the Embassy of The Netherlands, the lack of sufficient employment opportunities is a problem affecting all Sri Lankans, regardless of ethnicity. However, she added that Tamils may face additional difficulties in some instances.

The Executive Director of INFORM indicated that former asylum seekers have a particularly difficult time securing work, as employers are reluctant hire individuals without a recommendation. The FHD treasurer added that employers are reluctant to hire former asylum seekers because of fears they may be linked to the LTTE.

The treasurer further stated that Tamils "generally" need to present their police registration in order to secure a job. As well, employers may be unwilling in some cases to hire Tamils without a recommendation. However, the demand for a recommendation is more likely to be made of unskilled workers than either professionals or those seeking a higher-level position.

According to the Executive Director of Home for Human Rights (HHR), employers "often" ask Tamil job applicants to produce a police certificate of good conduct, which is difficult to obtain if one is from a conflict affected area. As well, the Executive Director claimed that Tamils are generally not hired by certain state agencies, including the Central Bank and Harbour Authority.

The Executive Director of INFORM stated that public education is free and accessible to all, including Tamils. According to the Executive Director of Home for Human Rights, families wishing to enrol their children in a publicly-operated Tamil-language school would be required to present the children's birth certificate, school-leaving certificate (if applicable), along with their police registration. The HHR Executive Director added that Tamils would experience no difficulty in attending an English-language school, where admission is based on ability to pay.

II. 1.4 Availability of housing for Tamils in Colombo

According to representatives of INFORM and the Forum for Human Dignity (FHD), Tamils often encounter problems obtaining lodging in Colombo, with landlords reluctant to rent to individuals they do not know for fear they may be involved in LTTE activities. INFORM's Executive Director indicated that lodge owners must advise police whenever a new tenant arrives.

The FHD treasurer stated that Tamils are generally reluctant to live in a non-Tamil area. However, the treasurer also indicated that the cost of housing in Tamil-dominated neighbourhoods is very high, which creates an additional barrier to those seeking lodging in Colombo. Furthermore, the Executive Director of Home for Human Rights (HHR) claimed that landlords often require Tamils to pay a higher rent than members of other ethnic groups.

The HHR Executive Director also stated that lodges frequented by Tamils from northern and eastern regions of the country are located predominantly in the Tamil neighbourhoods of Pettah, Slave Island, Kotahena and Bambalapitiya. The Executive Director characterised these lodges as private businesses, run mostly by Tamils and some Muslims. The FHD treasurer also indicated that lodge owners are for the most part Tamil. However, the First Secretary of the Embassy of The Netherlands claimed that lodge owners include individuals from all ethnic groups, including Tamils, Muslims and Sinhalese.

UNHCR stated that some of the lodges where Tamils stay seem to try to disguise their appearance, reportedly in an attempt to minimise problems with the police. Living conditions in lodges are often very poor, with limited living space available to residents.

According to the Executive Director of Home for Human Rights, while women, men and families with children all stay at lodges, the lack of privacy places women at particular risk of assault. This view was shared by the FHD treasurer, who stated that although women who are alone in Colombo do stay in lodges, they face problems related to the lack of security and privacy. The HHR Executive Director further stated that there are a number of women-only hostels in Colombo. However, she indicated that it is difficult to gain admission to these, as owners sometimes insist on a recommendation.

II. 2 Freedom of movement

II. 2.1 Internal movement of Tamils displaced by the conflict

Controls on movement from LTTE- to state-controlled areas

According to UNHCR and the Government Agents of Vavuniya and Mannar, the only official crossing point between LTTE- and state-controlled territory is at Piramanalankulam, located west of Vavuniya on the road to Mannar.

UNHCR indicated that the LTTE attempts to control the movement from uncleared to cleared areas, insisting for example that individuals leave at least one family member behind. While UNHCR noted that some individuals might be able to arrange for the departure of their entire family, many would not have the necessary resources to make such arrangements. UNHCR also indicated that, at Piramanalankulam, individuals can cross in both directions on Tuesday and Friday while on Thursday they can only travel from uncleared to cleared areas. The Government Agents of both Mannar and Vavuniya indicated that a maximum of 700 individuals can cross in both directions on Tuesdays and Fridays. According to the Government Agent in Mannar, the crossing point is open to cargo traffic on Saturday. The Mannar Government Agent added that the International Committee of the Red Cross is present at Piramanalankulam and monitors movement between the two sides.

Furthermore, the Mannar Government Agent stated that travellers' baggage and persons are searched at the crossing point, and they are questioned regarding their place of residence, nature of their business and involvement in LTTE activity. The Vavuniya Government Agent indicated that travellers crossing into cleared areas at Piramanalankulam are required to show an identity document, such as a National Identity Card (NIC). He further stated that screening of individuals making the crossing into cleared areas normally takes place between 9:00 a.m. and 12:30 p.m., and is undertaken by both army and police. Both UNHCR and the Vavuniya-stationed Superintendent of the Sri Lanka Police (Population Control) indicated that those using the official crossing point into cleared areas are processed by security forces and issued with a travel pass. According to UNHCR, individuals whose papers are in order are normally processed quickly.

UNHCR also stated that security clearance is required for travel to Colombo from Vavuniya and Jaffna.

The Government Agents of both Mannar and Vavuniya indicated that public buses are available at the crossing point to transport travellers not detained by security forces. The Government Agent in Mannar added that destinations served by these buses include Vavuniya and Mannar. The Vavuniya Government Agent indicated that travellers who are not considered displaced would be expected to find their own lodging in the cleared areas.

The Mannar Government Agent and the Bishop of Mannar stated that travellers who arouse suspicion on the part of security forces posted at the crossing point are taken to Vavuniya for further investigation. According to the Bishop, security forces may also confiscate travellers' National Identity Card and order them to make their own way to Vavuniya without their NIC.

Similarly, the Government Agent in Vavuniya stated that security forces stationed at the crossing point would confiscate the identity documents of travellers they deem to be suspicious, and order them to present themselves at an army screening camp in Vavuniya known as Sanasa.²⁸ According to the Government Agent, roughly five per cent of those making the crossing are detained at the Sanasa Camp. He added that young men and women are among those who are most likely to be ordered to go to the screening camp.

While the Magistrate of Vavuniya also indicated that security forces would collect the identity documents of travellers who arouse suspicion, he added that he has ordered army personnel to stop this practice. According to the Magistrate, individuals deemed to be suspicious would be ordered to present themselves at the Sanasa Camp, where they would be subjected to an investigation. The investigation, which includes interrogation, would "normally" last a maximum of 24 hours. At the end of the investigation, the individuals would either be released or, if suspicions of LTTE involvement persist, handed over to police for the purpose of keeping them in custody. The Magistrate claimed that young people between the ages of 20 and 30 years would be particularly likely to be ordered to report to the Sanasa Camp.

The Officer-in-Charge of Poonthoddam I Welfare Centre stated that displaced persons who have arrived from uncleared areas and are awaiting transfer to a welfare centre are also detained in the Sanasa Camp.

²⁸ Sansa Camp is divided into two sections: Sanasa I and Sanasa II.

Unauthorised departure from LTTE-controlled areas

In addition to those using the official crossing point between LTTE- and state- controlled territory at Piramanalankulam, UNHCR stated that a number of individuals are crossing unofficially in other areas. By way of example, UNHCR cited reports of families crossing the forward defence line in the Mannar region while waving white flags. In general, individuals leaving the uncleared areas without LTTE permission are reportedly doing so for many reasons, including for economic reasons or to avoid recruitment of family members by the LTTE.

The Government Agent in Mannar indicated that individuals "sometimes" cross illegally into state-controlled areas in Mannar District. Such individuals would normally be detained by the army and, after an investigation of between one and two days, transferred to a welfare centre. According to a report prepared by the Government Agent of Mannar in August 2001, 1,167 individuals crossed into cleared areas of Mannar District through Kaddaladampan and Pallimunai between January and August 2001. The report added that these individuals were interviewed by police and the army intelligence unit before being accommodated in Pesalai and Jeevdhayam Welfare Centres.

The Bishop of Mannar claimed that those who illegally enter state-controlled territory without obtaining a pass from the security forces are at risk of detention and assault. He cited the case of a Tamil man who was detained in Mannar in 1999 without a pass, after crossing by sea into the cleared area. According to the Bishop, he was beaten while in detention and subsequently died as a result of his injuries. As punishment, the commanding officer of the unit responsible for the incident was later transferred to another position.

Restrictions on travel from eastern regions to Colombo

UNHCR stated that a security clearance is required for travel to Colombo from Trincomalee and the Batticaloa area.

Other interlocutors could not provide detailed information on the existence of restrictions limiting travel from eastern regions of the country to Colombo. However, the lawyer with the Institute of Human Rights indicated that individuals would not encounter any difficulties in travelling from areas such as Ampara and Kalmunai to Colombo. He added that while it was once necessary to obtain a pass in order to travel from Batticaloa to Colombo, this was no longer the case.

II. 2.2 Pass system in force in Vavuniya and Mannar

The Superintendent of the Sri Lanka Police (SLP) (Population Control) in Vavuniya indicated that the pass system is necessary in order to prevent LTTE infiltration into areas under state control. However, several interlocutors, namely the Vavuniya Magistrate, the National Human Rights Commission (NHRC) Commissioner, along with representatives of the Forum for Human Dignity (FHD), the Institute of Human Rights (IHR) and the Legal Aid Foundation (LAF), characterised it as illegal and lacking in any statutory or constitutional foundation. Furthermore, the system was also described by the Vavuniya Magistrate as a restriction on Tamils' freedom of movement.

Like the Magistrate of Vavuniya, UNHCR characterised the pass system as a great restriction on the freedom of movement. This is in spite of the fact that the authorities initiated a process to simplify pass procedures in 2000, which has resulted in a decrease in the complexity of the pass system in force in Vavuniya District. According to UNHCR, the pass system in Vavuniya has been somewhat

simplified through a reduction in the number of types of passes from 21 to 15. UNHCR also indicated that there is currently a UNHCR proposal under consideration to further reduce the number of passes to five.

Vavuniya pass system

The Superintendent of the SLP (Population Control) stated that the pass system in Vavuniya has been in place since 1997. He added that responsibility for the issuance of passes is in the hands of police, and that all passes are issued free of charge.

The Commissioner of the National Human Rights Commission indicated that NHRC commissioners had held a meeting in March 2001 with the heads of state security forces in the Vavuniya region, informing them that the pass system was illegal and promoted corruption. The Commissioner did not indicate whether or not the security forces heads took any steps to address the NHRC's concerns subsequent to the meeting. Information on the types of passes in use in Vavuniya on 31 August 2001 may be found in Appendix 6.

According to the NHRC Commissioner, the Vavuniya Government Agent and the IHR lawyer, individuals arriving in cleared areas via the Piramanalankulam crossing point are given a seven-day pass. The representatives of the NHRC and IHR further stated that the issuance of the seven-day pass is a recent development, replacing the earlier practice of issuing newcomers with a one-day pass before allowing them to apply for passes valid for a longer duration of time. The Vavuniya Government Agent indicated that the seven-day pass can be extended for an additional week by submitting an application to the police and providing an acceptable reason as to why more time is needed.

The following information regarding the issuance of passes in the Vavuniya region was obtained from the Superintendent of the SLP (Population Control). Pass extensions can be obtained by applying at the Browns Company police station.²⁹ He further noted that individuals holding a seven-day pass can move freely in Vavuniya District, but cannot travel to southern regions of the country.

Individuals who have received a seven-day pass at the Piramanalankulam crossing point are entitled to apply for a one-month pass known as a "paper pass." According to the Superintendent, the paper pass was formerly valid for only 14 days, but its period of validity has been extended to one month. This pass can be issued in a single day, provided an application is submitted before 10:00 a.m. Between 200 and 300 paper pass applications are processed per day, of which roughly 10 to 12 would be flagged for further investigation.

After individuals have renewed their paper pass twice, thereby holding it for a total of three months, they are entitled to apply for a three-month card pass. To receive this pass, individuals must be sponsored by a permanent resident of Vavuniya, namely a registered voter who carries an army

²⁹ According to a report published by the Government Agent of Vavuniya in August 2001, passes were being issued at the following locations in Vavuniya Division in August 2001: Police Public Relations (PPR) Unit; Sanasa I; Sanasa II; Browns; Railway Station; Eratperiyakulam; Eratperiyakulam Railway Station; Nelukulam; Poovarasankulam; Piamanalankulam; Madukanda; Neriyaikulam; Ullukulama; Avaranthulava; Minor Offence Unit, Vavuniya; Divisional Secretariats; Mannar; Murunkan; welfare centres; 211th Brigade Headquarters, Vavuniya.

identity card. A sponsor can be either male or female, but must be between the ages of 18 and 60. It normally takes one month to issue this pass.

After individuals have renewed their three-month card pass five times, thereby holding it for total of 18 months, they are entitled to apply for a three-month open pass, which would allow them to travel to the South (other types of travel passes are discussed below). Issuance of this pass requires the approval of the Superintendent of Police (Population Control), and the application takes 15 days to process. Individuals applying for this pass must also have a sponsor.

Public servants who hold a three-month open pass are entitled to apply for a one-year open pass, which also allows them to travel to the South. Such passes are issued to public servants in recognition of the fact that they have many responsibilities and thus do not have time to attend to the renewal of their three-month open pass on a quarterly basis.

The Superintendent of Police added that passes described in preceding paragraphs must be applied for sequentially and an investigation of the applicant's activities is conducted each time he or she applies for a new pass.

Passes for travel to the South

In addition to the three-month open pass and the one-year open pass, the Superintendent of Police referred to three additional types of passes which allow one to travel to southern regions of the country: an elders pass, a travel pass, and a temporary pass for emergency travel.

The elders pass, granted to senior citizens, requires presentation of one's birth certificate. There are no travel-related restrictions for holders of this pass.

Individuals or families who need to travel to Colombo, for example to visit an embassy or seek medical attention, must apply for a travel pass. Applications from displaced persons are processed at Sanasa II, while applications from Vavuniya residents are dealt with at Sanasa I. Documentation required to apply for this pass includes the applicants' National Identity Card and a photocopy of their existing pass. Applicants must also have a sponsor who is a permanent resident of Vavuniya. Such individuals can only sponsor one travel pass applicant at a time, and they must hand in their own identity card, retaining a photocopy for the duration of the applicant's trip.

Furthermore, applicants are required to submit the name and address of a person in Colombo who is willing to take responsibility for them during their stay there, along with the address of the lodge whose owner has agreed to house them. Upon receipt of the application, police in Vavuniya would contact their counterparts in Colombo, asking them to confirm whether the person named by the applicant is prepared to play the role of guarantor. Once confirmation is received, the file is referred to the SLP Superintendent (Population Control), who would then approve issuance of the pass. According to the Superintendent, 113 applications for travel passes had been received by the Vavuniya police on the day before the fact-finding mission met with him.

A travel pass is valid for a maximum of three months. When individuals arrive in Colombo, they must register with police and hand in their travel pass for the duration of their stay. The pass is then returned to them when they are about to go back to Vavuniya. Individuals wishing to extend their stay in Colombo may do so by submitting a request to Colombo police, who would in turn notify their counterparts in Vavuniya. The matter would then be referred to the SLP Superintendent (Population Control), who has the authority to endorse the extension.

When individuals have to travel to Colombo on short notice, and there is insufficient time to make enquiries with Colombo police, they can apply for a temporary pass for emergency travel. To obtain such a pass, the applicant must have a sponsor in Vavuniya and be able to present documentation showing the reason for the urgency, for example, a letter from a school indicating that the applicant is being asked to write an exam on a particular date.

The Regional Coordinator of the NHRC in Vavuniya stated that his organisation had previously been willing to stand surety on behalf of those needing to travel to Colombo. However, he added that the practice had been stopped in January 2001 for security reasons.

UNHCR stated that it appears to be possible for individuals to circumvent pass related controls on travel from Vavuniya to Colombo *inter alia* through the payment of money. Individuals applying for a travel pass through official channels can obtain one for free.

Interlocutors provided contrasting information on the length of time necessary to issue a pass for travel from Vavuniya to Colombo. In the view of UNHCR, processing time for such passes is normally 7 to 10 days, although it is also possible to obtain a travel pass immediately by making a payment to a broker. According to the IHR lawyer, it normally takes two weeks to issue a travel pass. However, the FHD treasurer claimed that individuals can obtain such a pass within two to three days so long as they can provide a valid reason for the trip, along with a letter of support from their village officer, who is known as a Grama Sevaka. The treasurer added that he also knew of a number of cases of individuals being refused permission to travel to Colombo without explanation.

A number of interlocutors, namely the LAF Coordinator (who is also a lawyer in Vavuniya); the Vavuniya Regional Coordinator of the NHRC; and a representative of an international NGO, noted that there had previously been many arrests in Vavuniya related to the lack of valid passes, but the present Magistrate, before whom detainees must be presented, had stopped this practice, as he did not accept that there was a legal basis for such arrests. This information was corroborated by the Vavuniya Magistrate, who stated that he refuses to hear any pass related cases, because he deems the pass system to be an illegal infringement on the right to freedom of movement. Accordingly, security forces do not bring such cases to him.

However, the Coordinator of the Legal Aid Foundation and the Vavuniya Regional Coordinator of the National Human Rights Commission claimed that individuals who are not carrying a valid pass continue to risk arrest and detention at the hands of state security forces in Vavuniya. The two interlocutors indicated that security forces are now making pass related arrests under the terms of the Prevention of Terrorism Act, on the grounds of suspicion of involvement in LTTE activities.

Mannar pass system

Unlike the Vavuniya pass system, which is administered by the police, the Mannar pass system is in the hands of the army. According to the Mannar Office Coordinator of the Rural Development Foundation (RDF), the Mannar pass system has been in force since 1995. Those wishing to obtain or renew a pass may do so at the Civil Affairs Office in Mannar Town.

Both the Office Coordinator of the Rural Development Foundation and the Mannar Government Agent indicated that when individuals first arrive from uncleared areas, they are granted a seven-day pass. After they have renewed this pass once, thereby holding it for a total of two weeks, they are entitled to apply for a one-month pass.

The RDF Office Coordinator stated that, in order to obtain a one-month pass, applicants must have a sponsor, along with a letter of support from their Grama Sevaka. It takes two to three months to issue a one-month pass. Having obtained it, individuals are required to hold this pass for approximately six months before being allowed to apply for a three-month pass.

Both the Office Coordinator of the RDF and the Mannar Government Agent stated that individuals who are not permanent residents of Mannar who wish to travel to Colombo must apply for a travel pass at the Civil Affairs Office. The two interlocutors also indicated that information about where the traveller stays while in Colombo is verified by Colombo police. Furthermore, the RDF Office Coordinator stated that applicants must have a sponsor in Mannar, and their application must be certified by their Grama Sevaka. It normally takes at least one month to obtain a travel pass.

The RDF Office Coordinator also stated that individuals holding a pass valid only for Mannar District are allowed to travel without restriction to Vavuniya. Similarly, those carrying a Vavuniya-only pass are permitted to travel to Mannar.

The Government Agent in Mannar claimed that security forces routinely videotape everyone leaving Mannar District by bus, regardless of whether they are temporary or permanent residents.

The Government Agent further claimed that state security forces do not arrest individuals who are not carrying a valid pass. In instances where the pass had expired one or two days earlier, they would simply be reminded to renew it. However, after a week or more, they would be taken by security personnel to the Civil Affairs Office to arrange for a renewal.

The Mannar Government Agent indicated that individuals who have lived in Mannar for a minimum of nine months are entitled to apply for an army identity card, issued to permanent residents of the district. While no surety is required to apply for this card, the application must be endorsed by one's Grama Sevaka, and signed by an Assistant Government Agent. Furthermore, one must also submit three certified photographs of oneself. Applications are then reviewed by the army's intelligence unit before a decision to issue the identity card is made.

II. 2.3 Location and Status of Welfare Centres in Vavuniya and Mannar

According to an August 2001 report by the Government Agent of Mannar, 24,042 individuals resided in welfare centres located in Mannar District on 31 August 2001. An August 2001 report prepared by the Government Agent of Vavuniya stated that welfare centres in Vavuniya District housed a total population of 18,526 on 31 August 2001.

Welfare centres in Vavuniya District

The Government Agent in Vavuniya District stated that one welfare centre was closed in 2001, leaving 13 centres in operation.³⁰ The Officer-in-Charge of Poonthoddam I Welfare Centre stated

³⁰ According to a report published by the Government Agent of Vavuniya in August 2001, welfare centres in operation in the district in August 2001 included Sithamparapura, Kovilpuliyanukulam, Adappankulam, Poonthoddam I, Poonthoddam II, Poonthoddam III, Poonthoddam IV, Poonthoddam V, Poonthoddam VI, Poonthoddam VII, Poonthoddam VIII, Poonthoddam IX, Veppankulam and Nelukkulam. In a 7 October 2001 report, *The Sunday Leader* stated that Veppankulam Welfare Centre had been closed as a consequence of the relocation of part of the welfare centre population to sites elsewhere in Vavuniya District.

that in addition to these centres, there is one screening camp, known as Sanasa, where individuals arriving from uncleared areas are kept before being transferred to one of the welfare centres. The Vavuniya Government Agent stated that welfare centre "inmates"³¹ are allowed to leave the centre premises during the day, but they must return in the evening. Furthermore, they are required to obtain a pass from police stationed in the centre. The Government Agent indicated that between 70 and 75 per cent of welfare centre inmates leave the centres each day, for example to go to work or school.

According to the Officer-in-Charge of Poonthoddam I Welfare Centre, inmates can also be discharged on a permanent basis, for example if they wish to return to uncleared areas or stay with family members living elsewhere in Vavuniya District. However, should they decide to return to an area under LTTE control, they will not be allowed to return to a welfare centre. Families seeking discharge from a centre must submit an application form and supporting documentation, including their marriage certificate and birth certificates for all family members, to a committee composed of the Government Agent, superintendent of police and coordinating officer. Applications are considered on a case by case basis, with decisions normally rendered within one to two months.

The Coordinator of the Legal Aid Foundation stated that while state security forces are permitted to enter welfare centres in the Vavuniya region, they are supposed to report to the Officer-in-Charge of the centre before making any arrests. In the Coordinator's view, security forces comply with this requirement in the majority of cases.

The Vavuniya Government Agent indicated that welfare centre inmates enjoy access to "basic facilities," including health care and education. However, he added that because of a lack of funding for school supplies, the authorities cannot provide school uniforms. The Magistrate of Vavuniya stated that while authorities provide rations to welfare centre inmates, these provisions are not sufficient to meet their needs. He indicated as well that there is not enough living space for families residing in the centres, and that privacy is especially problematic for women.

A representative of an international NGO found the conditions in the welfare centres to be appalling with no privacy for the inmates and a lack of basic facilities such as sufficient water supply. Women without male partners or family members have to work outside the welfare centres which means that children are left alone. UNHCR characterised living conditions in welfare centres as often very difficult.

While in Vavuniya, the fact-finding mission had the opportunity to visit the Poonthoddam I Welfare Centre and meet with its Officer-in-Charge. The following information, obtained during this interview, describes conditions within Poonthoddam I.

As of October 2001, Poonthoddam I had a population of 891, of whom 54 were from Vavuniya, 362 from Kilinochchi, 289 from Mullaitivu, 183 from Jaffna and 3 from Mannar. There have been no new arrivals at the centre since February 2000. The Officer-in-Charge added that all decisions regarding welfare centre admissions are made by the Government Agent.

³¹ The term "inmates" was used by interlocutors to refer to welfare centre residents.

Hygiene facilities in Poonthoddam I consist of communal showers and 32 toilets. However, because well water in the welfare centre has been contaminated, inmates have to walk to a nearby centre in order to obtain their drinking water. All nine Poonthoddam Welfare Centres share a single dispensary, which is open one day per week. Individuals requiring hospital services must make their own arrangements to travel to Vavuniya Town. While there is no school in the centre, there are a number in the area that children can reach by public bus.

Individuals wishing to leave the welfare centre are required to obtain a pass. This can be obtained from the on site police post, which is staffed by six officers, one sergeant and one Officer-in-Charge. After obtaining their pass, individuals can leave at approximately 6:30 a.m. and must return no later than 6:00 p.m. However, the Officer-in-Charge indicated that inmates sometimes return late, and that the police do not take action against them.

Several organisations, including UNHCR, the Rural Development Foundation and UNICEF, are implementing projects within the centre. For example, one project provides additional rations to expectant mothers. As well, the International Committee of the Red Cross operates a service whereby welfare centre inmates can exchange messages with family members living in uncleared areas.

The Officer-in-Charge also stated that lack of living space is a problem in the centre. While food rations are allocated on the basis of family size, they are not sufficient to meet individuals' needs. Furthermore, because cooking fuel is not provided, inmates must either purchase kerosene or gather their own firewood.

Welfare centres in Mannar District

According to an August 2001 report by the Government Agent of Mannar, of 24,042 welfare centre inmates in Mannar District on 31 August 2001, 6,724 resided in centres in cleared areas, while 17,318 lived in centres in areas under LTTE control.³²

According to the Government Agent in Mannar, district authorities provide dry rations to inmates of welfare centres in both cleared and uncleared areas. Foodstuffs destined for centres in regions under LTTE control are sent via the official crossing point at Piramanalankulam. However, according to the Office Coordinator of the Rural Development Foundation (RDF), dry rations distributed to centre inmates are insufficient to meet individuals' needs. They are generally consumed within 15 days, forcing inmates to find their own food for the remainder of the month.

The Mannar Government Agent indicated that shelter and health services within the welfare centres are delivered by UNHCR. Additionally, government officers have been appointed to safeguard the rights of vulnerable populations within the welfare centres, specifically women, the elderly and children. Among other duties, they ensure that children living in the centres attend school regularly. An inmate management committee, consisting of both men and women, is also in place in each

³² According to a report published by the Government Agent of Mannar in August 2001, welfare centres in operation in August 2001 in the cleared areas of Mannar District consisted of Pesalai, Kaddaspaththri, Jeeovodhayam, Katkadanthakulam and Kalimodдай Puliyarikulam. Those located in areas of Mannar District under LTTE control consisted of Madhu, Palampiddy, Pali Aru, Vellankulam, Moonrampiddy and Illuppaikadavai.

welfare centre. This committee meets with welfare centre officers on a weekly basis to discuss problems and grievances, including those related to inmate security.

The Government Agent in Mannar further stated that there are no police posts inside the district's welfare centres, and that inmates do not need a pass in order to leave. State security forces wishing to enter the centres to perform searches or make arrests are required to notify welfare centre officers. However, this requirement is not consistently adhered to, with both security forces and Tamil paramilitary groups such as PLOTE and TELO "often" entering the welfare centres surreptitiously.

As well, the Government Agent considered the lack of work to be a problem for welfare centre inmates. While some secure employment as farm labourers, undertaking such activities as weeding and harvesting, much of this work is highly seasonal in nature, lasting as little as two months.

Furthermore, the Government Agent claimed that a number of social problems exist within the welfare centre population, including a significant degree of alcohol abuse. The Bishop of Mannar indicated that problems facing welfare centre inmates include promiscuity, drug abuse and loss of culture.

While in Mannar, the fact-finding mission met with Mannar-based personnel of the Rural Development Foundation, which is involved in project implementation in Pesalai Welfare Centre, which has a population of 4,469 and is located in a cleared area of Mannar District. The following information, obtained during an interview with the RDF Office Coordinator, pertains specifically to conditions within this centre. Pesalai Welfare Centre was established in approximately 1991. It was managed by UNHCR until 1996, when state authorities took over this role. Roughly 400 families without anywhere else to go have been living in the centre for as long as 10 years. The Office Coordinator indicated that individuals crossing from uncleared to cleared areas are required to stay in a welfare centre unless they have relatives living elsewhere who are willing to provide them with lodging.

The Office Coordinator characterised conditions in Pesalai Welfare Centre as unsatisfactory. For example, hygiene conditions are poor. Furthermore, there are no special arrangements to safeguard women's privacy. Other problems within the welfare centre include a high degree of inter-personal conflict and a serious lack of employment opportunities.

While there is a school in the welfare centre, it does not provide students with supplies, such as the required school uniform, pencils or notebooks. Given that the cost of these items is prohibitive for many families, children often go to work rather than to school. A non-governmental organisation operates a health clinic in the centre, and there is also a public hospital nearby. However, the delivery of health services is hampered by a shortage of drugs and other medical supplies.

Each month, non-governmental organisations active in the centre convene a meeting with female inmates, asking them to identify issues of concern. The NGOs then bring these problems to the attention of the Government Agent in Mannar District.

When UNHCR was responsible for the management of the welfare centre, state security forces were not allowed to enter. However, this policy was changed after control of the centre passed into the

hands of state authorities, and now security forces are permitted to conduct investigations and make arrests inside the welfare centre.

Security forces undertake round-ups within the welfare centre two to three times per week. Should a security-related incident occur in the vicinity of the welfare centre, security forces would likely round up the entire population of the centre, and detain between 20 and 30 individuals.

Resettlement of welfare centre inmates at "relocation sites"

According to UNHCR, government policy hitherto foresaw that persons living in welfare centres would generally remain there until such time that they could return to their home areas; however recently a new policy was adopted by the government which would allow more internally displaced persons to move to so-called "relocation sites" located in the cleared areas, where they are provided with housing and a plot of land. UNHCR stated that the authorities' timetable for relocation was a very ambitious one. In response to concerns regarding the security of some of the relocation sites, particularly in the Vavuniya region, UNHCR is working with the government to ensure that internally displaced persons are relocated in appropriate and secure areas. UNHCR stated that conditions at relocation sites are markedly better than is the case in welfare centres, and that it was not aware of any security-related incidents at the relocation sites.

According to the Government Agent in Mannar District, the government has made a policy decision to close welfare centres and resettle inmates in "relocation sites" located in cleared areas. According to the Mannar Government Agent, welfare centres in the Vavuniya region are being closed first in order to assess the effectiveness of the relocation exercise. The Office Coordinator of the Rural Development Foundation claimed that there is a planned deadline of December 2002 for the closure of welfare centres located in the cleared areas of Mannar District.

In an August 2001 report, the Government Agent of Vavuniya indicated that there are three relocation sites: Tharanikulam, Sundarapuram and Maravankulam. According to the same report, housing construction and provision of basic infrastructure at the relocation sites is being undertaken jointly by state agencies and non-governmental organisations.

According to the Vavuniya Government Agent, a total of 4,500 welfare centre inmates were resettled between January and October 2001. The Government Agent added that candidates for relocation are selected on the basis of such factors as family size, length of time spent in a welfare centre, and whether family members already own land elsewhere. Candidates are also subjected to a security vetting.

According to an August 2001 report prepared by the Government Agent of Mannar, a total of 50 families had been moved from welfare centres in Mannar District to a relocation site in Thoddavely.

A representative of an international NGO indicated that a main problem with the relocation sites was the security in the area around them. For example, one of the sites in Vavuniya is situated right on the forward defence line next to an army camp, which means that the inmates constitute a human shield and a buffer zone between the combatants. Furthermore, the representative pointed to the non-availability of employment opportunities in the area. Each family is given a quarter of an acre of land, which is not sufficient to feed a family, and in addition not all the relocated people have farming experience. The international NGO representative also stated that the construction of the houses in the sites is very poor and pointed to examples where the roof of houses had already blown

off. Finally the representative noted that there is a lack of basic facilities around the sites such as health services and pointed to problems related to access to sufficient water supply. The Office Coordinator of the Rural Development Foundation claimed that relocation sites are served by public transportation.

Both the Bishop of Mannar and the Vavuniya Government Agent indicated that individuals who move to the relocation sites are being provided with temporary assistance in the form of dry rations. The Office Coordinator of the Rural Development Foundation claimed that those who relocate are also being offered income generation assistance.

The Government Agents in both Mannar and Vavuniya stated that welfare centre inmates would not be forced to move to a relocation site against their will. The Vavuniya Government Agent added that approximately 80 per cent of welfare centre inmates are willing to be relocated, as they see no possibility of returning to their home areas.

Similarly, the Rural Development Foundation's Office Coordinator stated that welfare centre inmates are for the most part willing to move to the relocations sites. However, he added that there are a "few" people who would rather not leave. These are generally elderly individuals who are unable to work and thus fear that they would have no means of supporting themselves outside of the centres. As welfare centre inmates, such individuals are given "dry rations" each month.

II. 3 Legal Safeguards

As previously indicated, the State of Emergency lapsed on 6 July 2001, rendering the Emergency Regulations void on the same day. According to the Institute of Human Rights (IHR) lawyer, the Prevention of Terrorism Act (PTA) of 1979 remained in force after the State of Emergency lapsed, and was amended on 6 July 2001 to provide for detention of up to 15 days before a detention order is issued or before the person is produced before a Magistrate (see Appendix 3 for information on this amendment).

A representative of the International Committee of the Red Cross (ICRC) stated that the number of arrests occurring in Sri Lanka is at a stable level. As of October 2001, the number of detainees was 1,700, held in 20 prisons and 140 temporary places of detention, including police stations and army camps. The ICRC representative indicated that in the beginning of 2001, there had been a decrease in the number of arrests due to a lull in the conflict in the North and East and the LTTE's unilateral ceasefire. When the ceasefire was suspended in April 2001, more arrests were observed. According to the representative of the ICRC, the lapse of the Emergency Regulations in July 2001 had some influence on the number of arrests. People are now arrested under the PTA. The representative further stated that the army can still arrest people and hand them over to the police within 24 hours, but it has become more difficult for the police to keep people in detention as the police need further evidence to request a detention order from the Ministry of Defence, a requirement under the PTA. According to the ICRC representative, most arrests occur in the South of Sri Lanka whereas few arrests occur in Jaffna. The representative further reported that the majority of people visited by the organisation are detained in Kalutara, Boosa and Welikanda prisons.

Similarly, interlocutors from the IHR, Forum for Human Dignity (FHD), Centre for Human Rights and Development, Family Rehabilitation Centre and Home for Human Rights stated that the level of arrests in general was constant, and there had been no change in the number of arrests since the

Emergency Regulations lapsed in July 2001. Like the ICRC representative, most of the interlocutors cited above referred to the PTA, which was still in force in October 2001 and used as a legal basis to arrest LTTE suspects.

The FHD treasurer added that there has been a gradual decrease in the number of arrests since 1995-1996. The treasurer attributed this both to the fact that there are now more human rights NGOs operating, and that police are receiving human rights training, which he found to have had a positive impact on police behaviour.

UNHCR agreed that generally there appears to be no significant difference in the level of arrests in general, or after the Emergency Regulations lapsed in July 2001, in particular. While the organisation is not recording numbers of arrests and detentions, UNHCR was of the opinion that the level of arrests generally remained more or less constant, though with some local variations. Conditions for and control of arrests have to some extent improved due to the fact that the security forces today appear to be more aware of human rights issues than previously.

In reference to the actual number of people detained following cordon and search operations, the First Secretary of The Netherlands Embassy stated that it is very difficult to determine the actual number of people arrested because various sources give different figures.

A National Human Rights Commission (NHRC) Commissioner stated that the level of arrests and detention depends on the severity of LTTE incidents. The Commissioner referred to the attack on Katunayake Air Base in July 2001 which had led to an increased number of arrests, and similarly incidents such as the attack on the President in 1999 and incidents during the parliamentary elections in October 2000; all resulted in an increased number of arrests. The NHRC Commissioner could not provide the actual numbers of arrests over recent years, but stated that there was only a marginal difference in the level of arrests in 1999, 2000 and 2001. The Commissioner indicated that the lapse of the Emergency Regulations in July 2001 had led to a decrease in the number of arrests made by the armed forces. The Commissioner further stated that in general most arrests are made by the police force, and that the present level of arrests is highest in the South and in the eastern part of the country.

II. 3.1 Conditions for and control of arrests

II. 3.1.1 Compliance with the Presidential Directives issued for the work of the National Human Rights Commission

Reporting to the National Human Rights Commission within 48 hours of arrest

The Commissioner of the National Human Rights Commission (NHRC) stated that the requirement to report arrests to the NHRC within 48 hours had not been followed previously, but after March 2000 the Commissioner indicated that 80 per cent of arrests were reported. The NHRC is now having regular meetings with the heads of the armed forces and the police. According to the NHRC Commissioner, navy officers in Trincomalee had previously been unaware of the requirement to report arrests to the NHRC, but now the situation has improved. There are certain cases where arrests are not reported. For example, the Commissioner pointed to cases in Vavuniya, where the security forces do not want to continue to detain the person. The person is then released within 48

hours and no report of the arrest is made. The NHRC Commissioner also pointed to cases where officers of the Criminal Investigation Department from Colombo arrest specific wanted people in Vavuniya. In such cases, neither the regional office of the NHRC in Vavuniya nor the NHRC office in Colombo are informed of the arrest.

The Executive Director of Home for Human Rights mentioned that it was her impression that in general the requirement to inform the NHRC of arrests within 48 hours was being observed by the army, but less so by the police.

Issuing an acknowledgement of arrest

The Commissioner of the NHRC explained that the number assigned to the report issued to the arrested person's "next of kin" must be included in the report of arrest given to the NHRC.

According to the Commissioner, failure to notify family members of an arrest may deter arresting officers from issuing a report to the NHRC. In some cases, security forces inform the Commission that they were unable to locate members of the detainee's family, and thus were unable to issue an acknowledgement of the arrest. The Coordinator of the Centre for Human Rights and Development was of the opinion that arrest receipts were only being issued in 10 per cent of cases.

Questioning to be conducted in one's own language (Tamil)

The NHRC Commissioner stated that there are Tamil-speaking officers at all police stations in Sri Lanka. However, the Commissioner added that the Tamil-speaking officer might not always be available at the time of arrest. The NHRC Commissioner further pointed out that if a statement of a Tamil-speaking person is recorded in Sinhala, this statement would be challenged and dismissed when the case is brought to court.

The Coordinator of the Anti-Harassment Committee (PCUAH) stated that there are Tamil-speaking officers at all police stations in Colombo. In the Eastern Province there are also Tamil-speaking Muslim police officers working with their Sinhalese counterparts.

The Magistrate of Vavuniya and the Coordinator of the Vavuniya-based Legal Aid Foundation noted that most of the statements made by suspects in Vavuniya were recorded only in Sinhala.

A representative of an international NGO noted that there are not many Tamil-speaking officers among the security forces in Vavuniya. The representative added that army officers are rotated regularly in order to avoid developing relationships with the local people, which means that if the officers have learned the Tamil language, they may be replaced by others who have not.

Representatives of the Forum for Human Dignity (FHD), Institute of Human Rights (IHR) and INFORM pointed out that the requirement for questioning to be conducted in one's own language was in general not being followed. The Executive Director of INFORM added that the Presidential Directives were in general not being followed in connection with arrests.

Questioning by female officers

The NHRC Commissioner stated that there are a number of female officers in the security forces, but that women who are arrested would not always be questioned only by a female officer. The Regional Coordinator of the NHRC in Vavuniya stated that female officers would deal with 50 to 60 per cent of the cases involving women.

A representative of an international NGO stated that in Vavuniya the security forces are very strict about using female officers in connection with arrests of women.

The Director of the Criminal Investigation Department of the Sri Lanka Police stated that his department has a sufficient number of female officers to ensure that women who are detained can be questioned and guarded by female personnel.

According to INFORM's Executive Director, female officers are present at all checkpoints in the East, while they are not always stationed at Colombo-area checkpoints. On the other hand, the IHR lawyer and the treasurer of the FHD stated that female officers are normally present at checkpoints in Colombo.

II. 3.1.2 Conditions for people arrested

According to the Commissioner of the National Human Rights Commission (NHRC), approximately 95 per cent of people who are taken in during cordon and search operations and at checkpoints are released within a day. The Commissioner stated that five per cent who would be considered a suspect by the National Intelligence Bureau (NIB) and charged under the Prevention of Terrorism Act (PTA) might risk ending up in Kalutara prison for two to three years without any specific charges, and before a court case would be convened. According to the NHRC Commissioner, a case filed under the PTA would in general take two to three years to complete. The Commissioner considered this situation to be unsatisfactory and a violation of fundamental human rights. The NHRC Commissioner estimated that between 10 to 15 per cent of individuals detained under the PTA submit a breach of fundamental rights petition before the Supreme Court.

The NHRC Commissioner further mentioned that the NHRC, in connection with its visits to detention centres, would refer police reports to the Department of the Attorney-General in order to have a trial case started. If the trial has already been initiated, the NHRC cannot intervene. According to the Commissioner, the NHRC does not officially refer cases to NGO lawyers. However, he added that the NHRC does discuss cases with NGO lawyers.

Similarly, the Forum for Human Dignity (FHD) treasurer noted that 90 to 95 per cent of people arrested in connection with checks are released within 48 to 72 hours. If a person is not released within a short period, the PTA would in most cases be used as the legal basis for further detention or remand. The treasurer explained that the police can keep a suspect for up to 72 hours under the PTA after which the police either have to obtain a detention order from the Ministry of Defence or produce the suspect before a Magistrate. The detention order provides for detention up to three months with the possibility of extension of up to 18 months. If the person is produced before a Magistrate, the Magistrate would remand the person until the conclusion of the trial, but the remand order must be renewed every 14 days. The FHD treasurer noted that in the 5 to 10 per cent of cases where arrested individuals are not released within a short period of time, these individuals are usually kept in detention for more than a year. Furthermore, in 50 per cent of these cases, suspects are eventually released without charges being laid. The treasurer also indicated that many of the cases in which the only evidence against the suspect is his or her confession end up in the Supreme Court for breach of fundamental human rights, with the suspect alleging that the confession had been obtained under torture.

The Institute of Human Rights (IHR) lawyer pointed out that the PTA, which is used in most cases related to Tamil suspects, had been amended following the lapse of the Emergency Regulations in such a way that it is now possible to detain the person for up to 15 days before the detention order is issued or before the person is produced before a Magistrate (see Appendix 3 for further details). The IHR lawyer noted that the PTA requires some form of evidence, for example a confession or incriminating materials (such as weapons or bombs) as a basis for arrest. However, the lawyer was of the opinion that in most cases the security forces would arrest first and find reasons for the arrest afterwards.

The lawyer with the IHR further pointed out that one of the major problems related to remand orders issued by a Magistrate is that there is no restriction on the length of time they may be used, as long as the person is produced before a Magistrate every 14 days. Consequently, remand orders are constantly renewed until the conclusion of the individual's trial. According to the IHR lawyer, it may take three to four years before a person is brought to court, and very few (approximately five per cent) would be sentenced. When cases are finally brought to court, many people who have been remanded for two to three years would, according to the lawyer, plead guilty to minor charges in order to get released.

According to the Coordinator of the Centre for Human Rights and Development (CHRD), roughly 90 per cent of cases involving LTTE suspects fall under section 5 of the PTA, related to the "failure to give information."³³ The lawyer with the Institute of Human Rights stated that while section 5 provides for a maximum sentence of seven years imprisonment, there is no minimum sentence. Accordingly, if the person is charged under section 5 of the PTA and pleads guilty, the period spent in remand would most often be deducted from the sentence, and the person would end up being released. The IHR lawyer also noted that in many cases where the only evidence against a Tamil suspect is a confession recorded in Sinhala, which encompasses most of the cases registered by police in Colombo, the case would be challenged by the defence counsel when brought to court, and the person would be discharged.

According to the CHRD Coordinator, while 20 to 30 per cent of people being arrested in connection with checks and round-ups would end up being remanded or detained for an extended period, the level of arrests and detention is dependent on what he described as the "Colombo atmosphere." In contrast with the representative of the International Committee of the Red Cross, who stated that there are 1,700 detainees country-wide, the CHRD Coordinator estimated that at least 2,250 individuals are being held in detention. In addition, he noted that the number of arrests is particularly high in the Vanni region and that only 40 per cent of these arrests are acknowledged by the authorities. The Coordinator further stated that the authorities have failed to acknowledge some arrests in Jaffna as well.

³³ Under the terms of section 5 of the PTA, "any person who (a) knowing or having reasonable cause to believe that any person (i) has committed an offence under this Act, or (ii) is making preparation or is attempting to commit an offence under this Act, fails to report the same to a police officer; or (b) having in his possession any information relating to the movements or whereabouts of any person who has committed or is making preparations or is attempting to commit an offence under this Act fails to report the same to a police officer, shall be guilty of an offence and shall, on conviction be liable to imprisonment of either description for a period not exceeding seven years."

The CHRDC Coordinator further stated that suspects could also be detained under criminal law, which would require that the person be brought before a Magistrate within 24 hours. The remand order issued by a Magistrate must be extended every 14 days, after which the court can either release the person on bail or indict the person, depending on the report given by the police. He indicated that the police are using their own discretion, and if the answers given by a suspect are not deemed to be sufficient, the person would be indicted. The Coordinator stated that it normally takes one and a half to two years before cases are concluded; few people would be sentenced and many would be released.

The Administrator of the Family Rehabilitation Centre (FRC), which has access to prisons upon request, stated that in October 2001 there were approximately 400 LTTE suspects in Kalutara prison and 300 in Boosa prison³⁴, all held under the PTA. In addition, there are between 30 to 40 female LTTE suspects in Welikanda prison for women. Some of these suspects, according to the FRC Administrator, have been held in custody for two to three years without having a trial case initiated. While there is no research available on the actual numbers of people who are convicted after having been remanded, the Administrator stated that their impression was that it is a very low percentage. The FRC Administrator indicated that in general prisons are overcrowded. Like the CHRDC Coordinator, he stated that most LTTE suspects are held under section 5 of the PTA, for "failure to give information." Like the Institute of Human Rights lawyer, the FRC Administrator indicated that many suspects plead guilty to minor charges in order to end the uncertainty regarding the length of detention, and that time already spent in prison would most often be deducted. The Administrator also stated that a guilty plea would result in the imposition of a lighter sentence. However, it was the impression of the FRC Administrator that the sentencing policy has changed, and the authorities are now more harsh, not only in connection with LTTE suspects, but also in relation to criminals in general. The Administrator mentioned that criminal cases against army deserters in particular are increasing.

The INFORM Executive Director pointed to long-term detention without court proceedings as a major problem. In connection with cordon and search operations, the Executive Director indicated that one to two per cent of suspects would end up in Kalutara prison being remanded at length without lawyers to take action. She also pointed out that this was not only the case for Tamil suspects. According to the Executive Director, the legal system in general does not work very well, and normal criminals would also be subject to long term detention and would risk being in remand for a longer period than the actual penalty for the minor crimes they committed.

Conditions of arrest in Vavuniya and Mannar

The Regional Coordinator of the NHRC in Vavuniya noted that there had been approximately 500 arrests in Vavuniya as of October 2001. According to the Regional Coordinator and the Mannar Bishop, there has been no change in the number of arrests since the lapsing of the Emergency Regulations, with arrests now being made under the PTA. The Regional Coordinator noted that arrests in 75 per cent of cases would now be based on mere suspicion of LTTE activities and filed under the PTA. The Regional Coordinator stated that the biggest human rights problem in Vavuniya

³⁴ Kalutara prison is located between 40 and 50 kilometres south of Colombo; Boosa prison is roughly 100 kilometres south of Colombo.

is arrest and detention. These arrests take place in Vavuniya Town, in welfare centres and at transit points. He noted that court cases would be started in one to one and a half years, but could take four to five years before they were concluded. A Magistrate has no power to grant bail to a detainee. The Regional Coordinator of the NHRC stated that 70 per cent of the cases would be heard in the Vavuniya Court. Serious cases where the Criminal Investigation Department or Terrorist Investigation Department from Colombo was involved would be heard in the Colombo High Court. The Regional Coordinator further noted that most cases would be concluded with a release and no conviction, because the statement of the suspect had been recorded in Sinhala.

The Magistrate of Vavuniya stated that before July 2001, almost all of the arrests in Vavuniya would be cases filed under the Emergency Regulations. In contrast to the above statements by the Mannar Bishop and the NHRC Regional Coordinator, he stated that since July 2001 the number of arrests in Vavuniya has decreased to 10 per cent of its previous level. According to the Magistrate, 50 per cent of the arrest cases in Vavuniya would be without sufficient evidence to detain a person, and the person would be released within 72 hours. The Magistrate indicated that if there is a need for further investigation, a detention order for three months is ordered, and it can be renewed every three months up to 18 months. However, according to the Magistrate this does not happen often. In practice, a person would be held for a maximum of three months. The Vavuniya Magistrate stated that a detainee would generally be produced before a Magistrate within one to two months. The Magistrate also indicated that security forces in Vavuniya initially claim that individuals they have arrested are LTTE suspects. However, according to the Magistrate, only 35 per cent of such arrests actually involve suspicion of LTTE activities; the remaining 65 per cent involve non-terrorism related crime.

The Magistrate pointed out that the PTA is a restricted law in the sense that if the detainee makes a confession before an officer not below the rank of assistant superintendent, the confession is sufficient evidence. According to the Magistrate, the judge has “his hands tied” in these cases and can only wait for the court to process the case. The Magistrate stated that it would take two years or more to process a High Court case. However, according to the Magistrate, more than 90 per cent of cases based only on a confession are discharged in the High Courts,³⁵ because the confessions are usually recorded in Sinhala, and translated to the suspect by a Tamil-speaking police interpreter, who is not considered independent.

The Coordinator of the Legal Aid Foundation (LAF), who is also a lawyer in Vavuniya, mentioned that Vavuniya-area arrests have started to rise again as of September and October 2001. According to the Coordinator, the number of arrests in Vavuniya decreased slightly in 2000, but an average of 20 to 25 suspects were produced in court each month. Some four or five individuals would be discharged after their first appearance, but it would depend on the security situation in general. The LAF Coordinator indicated that the previous practice of arresting persons who lacked passes had been replaced by detaining people as LTTE suspects under the PTA. Like the Vavuniya Magistrate, the Coordinator stated that LTTE suspects are kept in custody one year on average under the PTA

³⁵ Under the terms of the 13th amendment of the Constitution of 1987, High Court cases in the North and East are heard in Tamil. According to the Vavuniya Magistrate, in practice the prosecutor speaks in Sinhala, the defence counsel in Tamil and the judge in English. This is the case in Mannar, Vavuniya and Jaffna Courts. The High Court in Vavuniya re-opened in 1997.

before their trial case is processed in court; the Coordinator added that it would take about six months for a person to be indicted under the PTA. The Department of the Attorney-General decides whether a case will proceed in the Vavuniya or Colombo High Court. According to the LAF Coordinator, only serious cases are heard in Colombo. The Coordinator stated that 95 per cent of PTA cases are based on confession alone, and 99 per cent of these cases are discharged. This has been a trend since 1997. All lawyers who are practicing in the Vavuniya Court are Tamil-speaking and the official proceedings of the Vavuniya Court are in Tamil, according to the LAF Coordinator.

A representative of an international NGO was of the opinion that the level of illegal arrests in Vavuniya, including arrests performed by Tamil paramilitary groups, is increasing.

Several sources, namely the LAF Coordinator; the Magistrate of Vavuniya; the Vavuniya Regional Coordinator of the NHRC; and the representative of an international NGO, pointed to a round-up in Vavuniya Town in October 2001 in connection with the murder of a person, who was deemed to be an informant for the security forces. Most of the sources cited above noted that apart from this incident, round-ups had not taken place for a long time in Vavuniya. However, the LAF Coordinator mentioned that round-ups have started again.

The Government Agent in Mannar stated that the level of arrests in Mannar is fairly constant, with three to four arrests per month. According to the Mannar Bishop, there has been no change in the number of arrests as a result of the lapse of the Emergency Regulations, as these were simply absorbed into the PTA. The Bishop added that arrests under the PTA for suspicion of LTTE involvement are occurring during round-ups or while individuals are walking on the street. Arrests are being made by the Sri Lanka Police Special Investigation Unit (SIU) or army intelligence. The Bishop also mentioned that arrests are being made as a way of extorting money.

II. 3.2 Availability of legal assistance

Availability of legal assistance in Colombo

According to the Home for Human Rights (HHR) Executive Director, the law provides for lawyers' access to detainees, but she indicated that lawyers in general had difficulties gaining access because the police say the detainee is still under interrogation.

The Coordinator of the Centre for Human Rights and Development (CHRD) noted that lawyers generally have no access to detainees within the first 72 hours of detention. However, some individual police officers may permit access during this period. According to the Coordinator, family members would sometimes be reluctant to contact a lawyer immediately, as they would try to solve the case directly with the authorities by attempting to have the detainee released through bribery. After 72 hours lawyers have access to detainees, who may also write to their lawyers. The CHRD Coordinator was of the opinion that 30 to 40 per cent of people would have no access to legal advice.

The treasurer of the Forum for Human Dignity (FHD) believes that there is sufficient free legal assistance available in Colombo. He mentioned that a number of NGOs are providing such assistance and that family members of detainees write letters to these organisations to urge them to intervene in cases. The FHD treasurer mentioned that lawyers in general have access to persons

held in remand, including suspects who are held in custody by the Terrorist Investigation Department.

The Executive Director of INFORM indicated that the availability of free legal aid is limited in comparison with the demand. She pointed to a few NGOs like the Legal Aid Foundation (LAF), Home for Human Rights and the Forum for Human Dignity, but stated that legal aid in general was very Colombo-focussed. According to the Executive Director, legal aid is not available in provincial towns, and lawyers must come from Colombo. She added that recently a group was started in Batticaloa to provide legal aid for women.

UNHCR also stated that the provision of legal services in the conflict affected areas is difficult *inter alia* for reasons related to the limited number of lawyers available in those areas. As well, there are very few human rights organisations and NGOs active in these areas. To improve the situation, UNHCR, in cooperation with the Sri Lanka Bar Association, recently agreed to carry out a legal service project in the conflict affected areas. In October 2001, offices were in the process of being established in these areas and it was hoped that by early 2002 internally displaced persons would find more effective legal services providers in their areas. According to UNHCR, it is anticipated that lawyers and para-legals involved in the project will, for example, hold free legal aid clinics and seek access to the welfare centres to provide such services.

Similarly, the First Secretary of The Netherlands Embassy and the Commissioner of the National Human Rights Commission (NHRC) said that the availability of free legal assistance was poor. There are NGOs who assist people in jails, but the availability of such assistance is not sufficient, according to the First Secretary. The NHRC Commissioner stated that awareness of the NGOs' existence is also limited.

The Family Rehabilitation Centre (FRC) Administrator indicated that very few NGOs or lawyers provide free legal aid, and there is a big demand for the few good lawyers who take cases of LTTE suspects. This has the effect of causing delays in processing the cases, according to the Administrator.

On the other hand, the lawyer with the Institute of Human Rights stated that there are many organisations providing legal aid assistance and that many of these organisations bring cases of breach of fundamental human rights to the Supreme Court.

Availability of legal assistance in Vavuniya and Mannar

According to the Magistrate of Vavuniya, most human rights organisations providing legal assistance are based in Colombo and come only occasionally to Vavuniya. The Magistrate added that the Legal Aid Foundation recently opened an office in Vavuniya to provide legal assistance to internally displaced persons, but this was the only legal assistance organisation operating in Vavuniya on a regular basis.

While both the Vavuniya Regional Coordinator of the NHRC and a representative of an international NGO indicated that legal assistance is available in Vavuniya through non-governmental organisations, they were of the opinion that the availability of such assistance is insufficient.

The LAF Coordinator, who is also a lawyer practicing in Vavuniya, stated that the main purpose of the project in Vavuniya, which was launched in early September 2001, is to assist internally displaced persons in obtaining documents such as passes, identity cards and birth certificates, or who face proceedings under the PTA or criminal law.³⁶ He further stated that in general many lawyers in Vavuniya had appeared free of charge in cases involving internally displaced persons, as such individuals do not have the means to pay a lawyer.

However, according to the Coordinator, if the same lawyer appears too often in such cases, he or she may also be considered an LTTE suspect. The Coordinator indicated that the project should serve to protect lawyers from such suspicion by spreading these cases among the 15 Vavuniya-based lawyers participating in the initiative. The Coordinator added that the LAF would refer cases involving individuals other than internally displaced persons to Home for Human Rights.

The Mannar Bishop noted that legal assistance is available in Mannar, with both non-governmental organisations and the Roman Catholic Church providing such assistance to detainees. However, the Bishop added that the Church does not have access to high quality lawyers.

The Mannar Government Agent stated that a Human Rights Citizens Committee was set up in 1992 to monitor the human rights situation in Mannar, after the security forces took over Mannar in 1990. According to the Government Agent, the Committee is headed by a priest, and comprises well-respected community elders. The Committee reports on a regular basis to the Government Agent. The Committee also refers particular cases to lawyers in Colombo when they find there is a need for a lawyer to intervene, according to the Mannar Government Agent.

II. 3.3 The occurrence of physical abuse/torture

UNHCR stated that it continues to receive reports of torture. Similarly, the First Secretary of The Netherlands Embassy stated that reports of torture perpetrated in conflict zones as well as in Colombo are still being received. She stated that torture takes place during interrogations by the army or the police and before the suspect ends up in a regular jail.

The Deputy Solicitor General in the Prosecution of Torture Perpetrators Unit of the Department of the Attorney-General took the view that the use of torture has decreased considerably in recent years and that senior police officers are now more aware of violations of human rights. The Deputy Solicitor General stated that his unit in the Department of the Attorney-General is also conducting training on human rights issues at the police training school in Colombo and in some other regions. Police officers from Vavuniya and Mannar have been brought to Colombo in order to participate in the one-day training course.

³⁶ The LAF Coordinator assigns lawyers to appear in court cases. If necessary, lawyers also come from Colombo for particular cases, i.e. when government employees are involved in cases. The project only assists internally displaced persons. The project office has no permanent staff; lawyers participate according to their availability. The office is located inside the court building in Vavuniya. According to the LAF Coordinator, there is no problem accessing the office, and people are allowed to enter the court if they give a valid reason. Project representatives have distributed brochures explaining the project's mandate and services in camps for internally displaced persons (in three languages: English, Tamil and Sinhala). As well, reports describing the project have been published in the English and Tamil press. During the LAF's first three weeks of operation, 50-60 applicants had visited its office for assistance in obtaining documents.

The Deputy Solicitor General stated that senior officers in general would not take part in torture, but at the junior level the use of physical and mental torture still occurs during interrogation, to extract information and for the purpose of obtaining a confession. He also indicated that there have been some cases in which senior officers have been involved in the perpetration of torture. When a detainee is produced before a Magistrate, he or she normally inquires about the use of torture. According to the Deputy Solicitor General, there have also been cases of false allegations against police officers where medical reports did not substantiate the torture allegations. The Deputy Solicitor General indicated that army and navy officers are generally not involved in torture; suspects arrested by the army or navy are normally handed over to the police for further investigation. However, he noted that there have been torture cases involving joint operations by the police and military.

The Commissioner of the National Human Rights Commission (NHRC) was in agreement with the Deputy Solicitor General that the level of torture in general has decreased, and stated that the Commission is receiving fewer complaints related to torture. According to the Commissioner, the total number of reports received on torture from January 2000 to 31 March 2001 was 28, of which 16 reports were from Kandy and 8 were from Colombo. However, the number of cases of sexual abuse and violence against women has increased. These cases were, according to the NHRC Commissioner, related not only to abuse by the security forces, but also to that committed within the civilian population. According to the Commissioner, while the perpetration of abuse against women is not a new phenomenon, more cases are now brought to the attention of the authorities because there is greater awareness of how to file a complaint.

The treasurer of the Forum for Human Dignity (FHD) also stated that the use of torture in police stations in general had decreased compared to two years ago, and especially compared to the situation in 1995-1996. Like the Deputy Solicitor General, the treasurer was of the view that this is due to the fact that many police officers have received training in human rights issues and are now more aware of violations of human rights. The treasurer noted that the use of torture is still a big problem within the Terrorist Investigation Department (TID) in Colombo, and the FHD had a number of recent cases related to clients who had been subject to torture while in TID custody. The scale of torture taking place at the TID does not happen in other parts of the country, according to the FHD treasurer. He pointed out that suspects who are picked up in other parts of the country, including Mannar and Vavuniya, are handed over to the TID in Colombo, if there is suspicion of terrorist activities. He further stated that torture is used to extract information, including the names of people involved with the LTTE.

The Administrator of the Family Rehabilitation Centre (FRC) stated that their clients claim to be tortured by both army and police officers during interrogation. According to the Administrator, torture has always been used by the police to extract information from suspects, and the police in Sri Lanka have always had a bad reputation for torturing suspects, beyond that related to the conflict in the North and East. The FRC Administrator indicated that although LTTE suspects are more likely to be tortured, criminals in general are also tortured. The Executive Director of the Family Rehabilitation Centre was in agreement that police officers have become more sensitive and are more aware of violations of human rights than previously, and added that army officers have also become more aware. According to the FRC Administrator, many NGOs are working on human rights issues, and FRC itself conducts training courses for army and police officers with the aim of

reducing the use of torture. The Administrator was of the opinion that army and police officers are now more careful in using physical torture which leaves scars and other visible signs, whereas the use of more sophisticated and psychological methods are continuing.

The Executive Director of INFORM took the view that torture is still a big issue in Sri Lanka, but stated that there has been an overall decrease in the number of torture cases reported, except from the eastern part of the country. The Executive Director was particularly concerned about the situation in Batticaloa. There were fewer reports about torture in Trincomalee in 2001, whereas in 1999 there had been many reports of torture perpetrated by navy officers in Trincomalee. She said that the reports of Judicial Medical Officers, which are required when arrested persons are handed over by the armed forces to the police, have to some extent acted as a deterrent to the use of torture. She also noted that these reports also constitute the basis for filing a case in the Supreme Court of breach of fundamental human rights.

On the other hand, the lawyer with the Institute of Human Rights (IHR) indicated that the level of torture in Sri Lanka is constant. Torture is used, especially by the Counter Subversive Unit (CSU) and the Special Investigation Unit (SIU) in Vavuniya, and by the TID in Colombo, to extract information from suspects. Torture is, according to the lawyer, also used in army camps and in police stations in general. The IHR lawyer and the Executive Director of Home for Human Rights stated that torture takes place during the interrogation period at police stations, but not in prisons. The Home for Human Rights (HHR) Executive Director further stated that torture is a big problem in Sri Lanka and that torture in general is used to extract information within the first 48 hours of detention. According to the Executive Director, authorities have become sophisticated in their techniques. The HHR Executive Director added that physical abuse happens occasionally in Colombo, but there are more cases in the East.

The Coordinator of the Centre for Human Rights and Development (CHRD) stated that the methods used for torturing people are more sophisticated, leaving no visible signs, than they were previously. The Coordinator noted that torture takes place at police stations and in army camps, especially in Ampara, Vavuniya, Mannar and Batticaloa, and also in certain areas of Colombo, but like interlocutors from the IHR and HHR, stated that torture does not occur in prisons. According to the CHRD Coordinator, all Tamils arrested as LTTE suspects would "definitely be tortured;" however he did not elaborate.

The occurrence of physical abuse/torture in Vavuniya and Mannar

As of October 2001, the Magistrate of Vavuniya stated that the number of torture cases has diminished during the previous six months, and was now only five per cent of the previous level. According to the Magistrate, when the army makes an arrest and hands the suspect over to the police, a medical report is prepared. While there is no Judicial Medical Officer (JMO) in Vavuniya, there is a Vavuniya-based District Medical Officer (DMO) who is authorised to investigate these cases, but who, according to the Magistrate, is not sufficiently trained for the job. When suspects are brought before the Magistrate, he inspects the person for visible signs of torture, and makes his own observation report. The Vavuniya Magistrate stated that if signs of torture are found, or if the detainee reports that he or she has been tortured, the Magistrate would issue a court order to have a medical report done by a JMO. According to the Magistrate, the district judge can decide whether he sends the case to a JMO in Annuradhapura or in Colombo for further examination. If the medical

report confirms signs of torture, the Magistrate has no power to release the person, but must refer the case to the Department of the Attorney-General, and upon its recommendation the case would be referred to the Supreme Court as a breach of fundamental human rights application. According to the Vavuniya Magistrate, in such cases the defence counsel would usually petition the Supreme Court to have the case discharged and the person released. The Magistrate added that in a few cases compensation is paid to the victim.

The Vavuniya Regional Coordinator of the NHRC similarly indicated that the level of torture is decreasing in Vavuniya. The Regional Coordinator pointed out that the present Magistrate inquires about torture when people are produced before him. Earlier there had been a practice where the DMO report would be the only evidence in torture cases, but now a JMO might also be involved at the Magistrate's request. When detainees are brought to the DMO by the army or police, they are fearful of reprisals and thus are generally reluctant to report the incidence of torture. The Regional Coordinator further stated that in some cases DMO medical reports have been issued without an examination of the detainee.

Like the Vavuniya Magistrate, the Coordinator of the Legal Aid Foundation stated that if a confession was obtained by using torture, the case would be referred to the Department of the Attorney-General as a case of breach of fundamental human rights. The medical reports play a major role in these cases. The Coordinator pointed out that the DMO in Vavuniya is authorised to do the investigation, but at a time when the suspect is still in police custody and cannot speak freely. For this reason, according to the Coordinator, the defence counsel would request a second medical report by a JMO, when the suspect is in remand. The Coordinator stated that forms of torture include cigarette burning and injuries to the genitals.

The representative of an international NGO stated that reports of torture are still received, but pointed out that torture includes all sorts of methods from beatings to more sophisticated methods. The representative indicated that torture occurs in army camps and in police detention. The representative was of the opinion that state security forces exert a lot of pressure on the DMO in Vavuniya to refrain from reporting incidents of torture.

According to the Mannar Government Agent, there have been no recent reports of torture in Mannar. While the Mannar Bishop indicated that security forces are now more careful not to commit abuses because of the pressure being applied by human rights organisations, he claimed that the human rights situation in general remains poor in Mannar. He further stated that Tamils in particular are subject to torture and other human rights violations. According to the Bishop, there are 40 to 50 allegations of torture per month in Mannar. The Bishop said that this information was based on incidents reported to the Human Rights Citizens Committee and reports from the Deputy Director of Health Services, who receives 35 to 40 torture victims in the Mannar hospital per month. According to the Bishop, torture mainly takes place in police custody in Mannar, and the methods used include hanging by hands and legs, forced breathing of chili powder, placing bags soaked in petrol over the head, shoving the head into a bucket of urine and shoving pins under the nails.

In addition, the Bishop was of the opinion that there are many cases of rape of women in custody which are not reported to the authorities because of threats made against the victims. The Bishop pointed in particular to a March 2001 incident in Mannar in which two women were allegedly

sexually assaulted in police custody at the Special Investigation Unit after being detained by navy officers at a checkpoint. According to the Bishop, the two women were subsequently released on bail; 16 members of the state security forces, including 14 police officers and two navy officers, were arrested in connection with the alleged rape. The Mannar Government Agent also referred to the March 2001 rape incident, stating that the case against the alleged perpetrators remained pending as of October 2001.

II. 3.3.1 Petitions to the Supreme Court for breach of fundamental human rights in connection with torture

The Deputy Solicitor General heads a special prosecutions unit set up in the Department of the Attorney-General in early 1999 to deal with torture cases. The unit deals with both cases related to article 11 of the Sri Lankan Constitution, which prohibits torture (for breach of fundamental human rights) and with cases under the Torture Act. According to the Deputy Solicitor General, the unit received a total of 93 cases from 1999 to December 2000, including cases reported to the Sri Lankan Government by the UN Special Rapporteur on Torture. Of the 93 cases, 41 were referred to the unit by the Supreme Court. The number of cases was increasing in 2001, but the Deputy Solicitor General could not provide the actual number. Five lawyers work in the special unit, but these lawyers also perform other duties in the Department of the Attorney-General. The Deputy Solicitor General stated that the unit does not have sufficient resources and that it is difficult to cope with the amount of work. He pointed in particular to the cases reported by the UN Special Rapporteur, and indicated that the biggest challenge facing the unit was to locate the witnesses in such cases.

The Deputy Solicitor General stated that according to the law, fundamental human rights cases should be dealt with within two months, but in practice it could take six to seven months or more. He further stated that according to law the cases related to breach of fundamental human rights should be filed within 30 days of the offence, but if there is a reasonable ground for delay, for instance if the torture victim is held in detention, cases could also be filed after 30 days. According to the Deputy Solicitor General, most of these cases are from the North and East, but all cases are heard in the Supreme Court in Colombo. The unit has not been dealing with any cases related to offences committed by the Terrorist Investigation Department.

The Deputy Solicitor General mentioned that it is a matter of practice that medical reports are prepared when a detainee is transferred from the army to the police. In the provinces, junior officers are involved in preparing medical reports, but if the reports are questionable, the defence counsel can request that a second report be made. According to the Deputy Solicitor General, there have also been false allegations against the security forces and cases in which senior medical officers had stated that the injuries could not have been caused in the way claimed by the person. The Deputy Solicitor General stated that compensation had been awarded in "many cases", but could not provide the actual number.

However, the Commissioner of the National Human Rights Commission (NHRC) mentioned that it is not very frequent that compensation is paid to torture victims in fundamental human rights cases raised in the Supreme Court. According to the Commissioner, there have been five cases in 2001 where compensation has been paid. Similarly, the Coordinator of the Anti-Harassment Committee (PCUAH) was aware of two to three cases since 1998 in which compensation has been paid to a

torture victim. In cases where no compensation is paid, the NHRC Commissioner indicated that his organisation can recommend the case to the President, who can raise it in parliament, but there is neither expertise nor time within the Presidential Secretariat to deal with such cases. He pointed out that the NHRC only has the power to recommend cases, but cannot order any action. He also noted that the special unit established by the Department of the Attorney-General to deal with torture cases is not as efficient as it could be. The Executive Director of INFORM also made this point, blaming a lack of resources. She also pointed out that there were not enough Tamil-speaking officers to deal with these cases. The Executive Director took the view that the unit had been set up mainly as a showcase for the international community.

The Coordinator of the Centre for Human Rights and Development (CHRD) explained that Judicial Medical Officer (JMO) reports are the basis for filing a case of breach of fundamental human rights in the Supreme Court and to prove that confessions have been obtained by using torture. The Coordinator noted that some JMO reports would not be properly made due to racism at all levels, but there were also well-qualified JMOs. For some of the cases referred to the Supreme Court, a new medical report would be requested. According to the CHRD Coordinator, some lawyers would be reluctant to file a breach of fundamental human rights case immediately, as this could lead to further torture if the victim was still in custody. The Coordinator mentioned that many cases in the Supreme Court would be resolved by compromising, in such a way that the application would be withdrawn in exchange for release. The Coordinator of the CHRD estimated that about 200 cases of breach of fundamental human rights related to the alleged use of torture are filed each year. The Coordinator indicated that very few cases would lead to compensation for the victim. If a compensation case is filed in a High Court it would, according to the CHRD Coordinator, generally drag on for years.

The Executive Director of INFORM took the view that a maximum of 10 per cent of cases involving torture would lead to a case being filed in the Supreme Court. According to the Executive Director, it is a complicated process to file a case in the Supreme Court, and it would require financial resources to pay lawyers and to make trips to Colombo. These trips would be complicated: if the torture victims live in the North or East, special permission would be required for travel to the South. The INFORM Executive Director further pointed to the limitations in the law, i.e. that petitions have to be lodged within 30 days of the offence. In addition, many victims would be afraid to prosecute security or police officers. The Executive Director of Home for Human Rights also expressed the opinion that the requirement that a complaint be raised within 30 days of the incident prevented cases from being launched before the Supreme Court.

The Institute of Human Rights (IHR) lawyer also pointed out that the limiting factor in filing fundamental human rights cases is that they have to be filed within 30 days of the offence and it is difficult for a person remanded in prison to find a lawyer. In contrast to the figure provided by INFORM's Executive Director, the IHR lawyer estimated that about 20 per cent of all torture cases would be filed as a fundamental human rights claim. The IHR lawyer described the process: most cases would be resolved by withdrawing the original charges against the complainant and ordering his or her release. If there is evidence of torture in the Judicial Medical Officer's report, the Department of the Attorney-General would indicate that it is prepared to withdraw the indictment. The accused can then decide whether he wants to withdraw his petition, and in most cases the application is withdrawn. While the IHR lawyer was aware of instances in previous years where

compensation of between SLR25,000 and SLR100,000 had been paid, compensation would now only be paid in a few cases. He compared the process to a “bargaining” situation. Clients who have been remanded for two to three years would want to be released, and in most cases they would not proceed with a case against the torture perpetrators for compensation.

The treasurer of the Forum for Human Dignity (FHD) indicated that 80 per cent of those remanded bring forward a fundamental human rights application for reasons of torture and/or illegal detention. Some 40 per cent of the cases would be both illegal arrest and torture, whereas 60 per cent would be just for illegal arrest/detention. Most of these cases (70 to 75 per cent) would, according to the FHD treasurer, be resolved by releasing the suspect, if the only evidence in the case was a confession obtained by using torture. He noted that most of these cases were related to the Terrorist Investigation Department. The FHD treasurer further noted that the release would be based on a negotiation in which the defence counsel would opt for withdrawing the case if the suspect was released. In the majority of cases, no compensation would be paid to the victim. The FHD treasurer pointed out that it would take at least two years to pursue a fundamental human rights case for compensation in court, and the case would be complicated by the fact that witnesses would probably have to be called from the North or East.

The Family Rehabilitation Centre (FRC) Administrator felt that the possibility of bringing cases to the Supreme Court for infringement of fundamental human rights to some extent acts as a deterrent to the use of torture, but indicated that the actual number of cases brought to the Supreme Court is very low: approximately five per cent of cases involving torture. The Administrator explained that this was because a lawyer would be needed to bring a case to the Supreme Court, which requires financial means.

II. 3.3.2 Prosecution of torture perpetrators

The Deputy Solicitor General responsible for the Prosecution of Torture Perpetrators Unit did not point to any particular cases in which members of the armed forces had been prosecuted for the use of torture, but mentioned that there were a number of such cases involving police officers. The Deputy Solicitor General pointed out that the fact that police officers cannot get a promotion if they have been involved in human rights violations within the previous five years acts as a deterrent to torture. In addition, the Deputy Solicitor General pointed out that police officers would have to spend their own money on lawyers and pay compensation if they were successfully prosecuted. According to the Deputy Solicitor General, an officer would not be dismissed from duty unless he or she was found guilty.

The Coordinator of the Anti-harassment Committee (PCUAH) mentioned that there had been four or five cases involving prosecution of torture perpetrators during the past years. The Coordinator pointed to the Krishanthi case³⁷ and two ongoing cases from 2001, involving police officers accused of rape at checkpoints in the Colombo neighbourhoods of Maradana and Bambalapitiya.

³⁷ In September 1996, Krishanthi Kumaraswamy was raped and killed by security forces in Jaffna. Two relatives and a neighbour were also killed. On 3 July 1998, the Colombo High Court sentenced five soldiers and a police officer to death in connection with the incident (*Sri Lanka Monitor*. July 1998. "Death Sentence").

With regard to the prosecution of torture perpetrators, the Administrator of the Family Rehabilitation Centre (FRC) referred to the Torture Act which was signed by the government of Sri Lanka in 1994 (see Appendix 4). Since its enactment, no cases have been concluded, and six or seven cases were pending as of October 2001. The Coordinator was of the opinion that the effect of prosecutions was limited due to the fact that alleged torture perpetrators would not be dismissed from their duties if convicted, although they may consequently not be promoted.

The Forum for Human Dignity (FHD) treasurer mentioned that two to three cases against police officers had been filed under the Torture Act. According to the FHD treasurer, one of the main problems in this respect was the inability of victims to identify the officers involved in torture.

The Centre for Human Rights and Development (CHRD) Coordinator also underlined that no Torture Act case against alleged torture perpetrators had been resolved. As an example, he pointed to the Mailantenna case, involving the alleged killing of 35 villagers by armed forces personnel in Batticaloa District in 1992. As of October 2001, cases against the 21 soldiers implicated in the killings remained pending.

The Magistrate of Vavuniya stated that army officers committing offences while on official duty should be detained by the military police and prosecuted by the military courts. The Magistrate pointed out that the Krishanthi case, which led to the discovery of the Chemani graves, involved an army officer who was not on official duty when the crime was committed. The Magistrate commented that this was the only case to date that has resulted in the prosecution of a member of the armed forces.

The Mannar Bishop took the view that torture perpetrators are protected by the law.

II. 3.4 Official and unofficial detention centres

The Commissioner of the National Human Rights Commission (NHRC) stated that under the Emergency Regulations there was a requirement to publish lists of detention centres. Following the lapse of the Emergency Regulations, the government issued a gazette notification on 30 July 2001 under the terms of the Prevention of Terrorism Act listing 350 official places of detention.³⁸ The Commissioner noted that while the regional offices of the NHRC receive information about unofficial detention centres (i.e. those not published in the government gazette) in army camps at the forward defence line, security concerns prevent them from carrying out investigations in these areas.

The Regional Coordinator of the NHRC in Vavuniya noted that Commission personnel pay six visits per month to the detention centres in Vavuniya. He added that regular visits are also being paid by the Vavuniya Magistrate and the International Committee of the Red Cross. The Vavuniya Magistrate likewise stated that he visits the detentions centres twice a month. He noted that under the Emergency Regulations, Officer-in-Charges of detention centres were required to advise the Magistrate every 14 days of people being held in detention.

The NHRC Regional Coordinator stated that the police have four officially gazetted detention centres in Vavuniya, but people are also detained by specific police units, for instance the Special

³⁸ The Nadesan Centre. 22 August 2001. "Regulations Under PTA."

Investigation Unit. According to the Regional Coordinator, these detention centres are illegal as they are not officially gazetted and the NHRC has no access to them. The NHRC has access to official detention centres in army camps. The Regional Coordinator further noted that the People's Liberation Organisation of Tamil Eelam (PLOTE) is running its own detention centre in Vavuniya, known as "Flower House." The NHRC has tried unsuccessfully to gain access to the centre.

The Executive Director of Home for Human Rights (HHR) stated that Magistrates have an obligation to visit places of detention on a regular basis, but in practice this is not done, with the exception of the Magistrate of Vavuniya, who, according to the HHR Executive Director, is active in this respect. Similarly, Officers-in-Charge of detention centres have an obligation to provide lists of the detainees to Magistrates, but according to the Executive Director this obligation is not being met.

While the NHRC Commissioner claimed that Tamil paramilitary groups do not operate any detention centres in Colombo, the Executive Director of INFORM mentioned that there were reports of illegal detention by the Eelam People's Democratic Party in Colombo, Jaffna Town and on Kayts Island. The Executive Director pointed out that the main problem in this connection is that Tamil paramilitary groups are not being held accountable by the authorities, whereas the security forces could be held accountable in court for illegal arrest or detention. The INFORM Executive Director stated that the Magistrate of Vavuniya has had some success in holding members of Tamil paramilitary groups accountable as individuals operating on their own, but not the groups themselves. The Executive Director was aware of at least one detention centre in Vavuniya run by PLOTE. A representative of an international NGO also noted that PLOTE is running its own illegal detention centre, to which human rights organisations have no access. UNHCR would not exclude the possibility that unofficial detention centres are run by anti-LTTE Tamil paramilitary groups in Vavuniya. The Family Rehabilitation Centre Administrator mentioned that there are newspaper reports of Tamil groups running their own detention centres, but the centre did not have any information to confirm this.

The lawyer with the Institute of Human Rights (IHR) claimed, citing information received from his organisation's clients, that there are unofficial detention centres in the Vanni region, including unauthorised places of detention in army camps and in certain police units.

The First Secretary of The Netherlands Embassy noted that there are not many reports of detention in unofficial detention centres, and that it has not been a big issue during the last two to three years. The Forum for Human Dignity treasurer was not aware of any unofficial detention centres, but mentioned that previously there were reports of arrests conducted by PLOTE in Vavuniya.

II. 3.5 Disappearances

UNHCR stated that it deals with a number of disappearance cases. However, claims of disappearances may be difficult to confirm. According to UNHCR, armed groups blame other groups for abductions and disappearances. In addition, there may be reports of disappearances in cases where persons have actually joined the LTTE or other armed groups. The Coordinator of the Anti-Harassment Committee (PCUAH) also stated that some of the disappearances reported include people who either end up with one of the Tamil groups or the LTTE. Some parents are aware of the fact that their children have joined the LTTE, but sometimes report the disappearance to the NHRC as a sort of "insurance" for the family's safety.

The Commissioner of the National Human Rights Commission (NHRC) stated that the number of disappearances was decreasing, but could not provide the actual number of cases reported in 2001. The Commissioner referred to four recent disappearance cases from Vavuniya. These cases were followed up by the regional NHRC office, which had reported that one of the four persons was reported to have possibly joined the LTTE. The NHRC Regional Coordinator in Vavuniya stated that his office regularly receives complaints from family members about people who have been illegally arrested and have disappeared. According to the Regional Coordinator, the NHRC investigates such cases, but the investigation may be complicated due to the fact that family members cannot tell who carried out the arrests, as members of the various security forces all wear the same uniform. Disappearances related to PLOTE still occur, but are decreasing, according to the NHRC Regional Coordinator.

The lawyer with the Institute of Human Rights stated that a number of disappearances, mostly originating in the Vanni region, have been reported by newspapers. However, he added that the newspapers usually fail to follow up on these cases, and relatives do not always report the re-appearance of a "disappeared" family member, or the fact that the individual had actually joined the LTTE or one of the Tamil paramilitary groups.

Interlocutors provided contrasting information on the number of alleged disappearances in recent years. The First Secretary of The Netherlands Embassy indicated that she has heard very few reports of disappearances in 2000 and 2001. The Executive Director of INFORM stated that while disappearances were a big issue in 1990s, this is no longer the case. She added that of approximately 60 disappearance cases known to her office in 2000, most of the people involved were later found. The Home for Human Rights Executive Director similarly stated that there has been a reduction in the number of disappearances since 1998.

In the view of the Coordinator of the Centre for Human Rights and Development (CHRD), while cases of disappearances are decreasing in Colombo, they are increasing in Mannar, Batticaloa, Vavuniya and Jaffna. The Coordinator claimed that there were approximately 300 disappearances in the North and East in 2001, and between 200 and 300 cases in 2000. However, the CHRD Coordinator indicated that it is difficult to follow up on cases reported, making it difficult to ascertain the actual number of disappearances. The treasurer of the Forum for Human Dignity also noted that the number of reported disappearances had increased in Vavuniya, Mannar and Batticaloa in 2001 as compared with the previous year.

The Vavuniya Magistrate said that in early 2001 there were several cases of alleged disappearances in Vavuniya related to arrests, but now most arrests (80 per cent) are reported to the NHRC.

A representative of an international NGO noted that disappearances are not always "real" and all cases have to be investigated. In this connection, the representative noted that there is a high rate of suicide in Vavuniya, especially in the welfare centres.

The Mannar Bishop noted that there have been cases of disappearances, but in most instances the people are later found, and reported they had been arrested and held without the knowledge of family members. However, the Bishop also indicated, without providing additional details, that there are some cases where people are "disappeared" and killed.

In addition, the Mannar Bishop stated that the Human Rights Citizens Committee in Mannar, in which he is personally involved, holds regular meetings with the army and the police and discusses reports of arrests and disappearances it has received (please refer to section II.3.2 for additional information on this Committee). The Bishop noted however that some members of this committee have been restricted in their work and have received threats from police officers.

Death in custody

The NHRC Commissioner stated that there had been two incidents of death in police custody in the 12 months prior to October 2001: one incident in Kalutara prison in Colombo and one case in Vavuniya. The latter involved a woman who died after consuming a cyanide capsule hidden on her person.

The Forum for Human Dignity treasurer pointed to an incident in Bindunuwewa in October 2000 in which 27 inmates at a rehabilitation camp for former LTTE cadres were killed.³⁹ The treasurer also mentioned that there had been fighting among the inmates in Kalutara prison in 2000 in which two persons were killed with weapons possessed by other inmates. The Centre for Human Rights and Development Coordinator similarly referred to the incident in Kalutara prison in 2000, but mentioned that the number of deaths in custody otherwise is very low.

II. 4 Government-appointed committees mandated to monitor safety and security of Tamils

II. 4.1 National Human Rights Commission

The Commissioner of the National Human Rights Commission (NHRC) stated that following the appointment of a new slate of commissioners in April 2000, the new commissioners spent some time clearing up a backlog of cases and re-structuring the work of the NHRC to fall within three categories: 1) complaints, investigation and inquiries, 2) advisory functions to the government on human rights, and 3) promotional activities, including education and awareness creation on human rights issues. The Commissioner compared the function of the NHRC to the function of an Ombudsperson for human rights.

The Commissioner explained that the budget of the NHRC must be approved on a yearly basis according to the law. He stated that according to the Human Rights Act, the NHRC has to convince the government whenever additional funding is needed for the Commission, but to date, the government has reacted positively to the requests of the Commission. The Commissioner stated that it is difficult for the Commission to attract qualified staff due to low salaries. The NHRC operates 10 regional offices, but the staff at the regional offices has not received any formal training.

The Commissioner noted that while the NHRC is not facing any problems in gaining access to detention centres from the authorities, it is faced with restrictions due to lack of resources. The Commissioner mentioned that in Colombo the NHRC has 10 to 15 staff members who pay visits to

³⁹ On 25 October 2000, a mob attacked a rehabilitation centre in Bindunuwewa, near Bandarawela, killing 27 Tamil inmates and injuring 14 others. One of the injured later died in hospital (*Sri Lanka Monitor*, October 2000. "Massacre in the Hills").

detention centres in Colombo, Negombo, Kalutara and Boosa on a weekly basis, but in the provinces visits are restricted to once a month.

UNHCR agreed that the NHRC lacks resources. It also stated that the current NHRC has made tremendous efforts to clear away the backlog of pending cases. UNHCR believes that there is a need to further strengthen the capacity of the NHRC both in terms of finances and personnel. UNHCR stated that the NHRC is moving in the right direction and UNHCR is in the process of reaching an agreement with the NHRC aimed at further strengthening its capacity, especially its capacity to assist internally displaced persons. UNHCR also indicated that while the regional offices of the NHRC do a very good job, they are restricted in carrying out their work due to limitations of funds, especially regarding vehicles and equipment.

According to the First Secretary of The Netherlands Embassy, the NHRC has become more effective since the appointment of new commissioners. However, it has a heavy case load and is dealing with various matters. The First Secretary indicated that a number of regional offices are not working efficiently, especially in Ampara and Jaffna, and that the NHRC is not serious about staffing these offices. She further stated that the NHRC is facing a number of problems, including a lack of sufficient investigative powers. The First Secretary pointed out that the NHRC had been the first organisation to investigate the Bindunuwewa incident in October 2000. The Commission had published a critical report on the incident, but the government had not seriously followed it up.

The INFORM Executive Director said that there had been a change in the attitude of the NHRC since the appointment of the new commissioners. The NHRC was now more open to NGOs, as some of the new commissioners previously had worked in the NGO sector. The Executive Director was of the opinion that the NHRC was still too bureaucratic and that the Commission tended to get bogged down due to a very broad mandate, including administrative cases related to job promotions, access to exams, etc. In particular, the Executive Director of INFORM indicated that the mandate of the NHRC to review legislation is not being dealt with by the Commission. The Executive Director also said that the NHRC should be more interventionist. While the NHRC does visit police stations and detention centres, the Executive Director mentioned that it was on a less frequent basis than when the Human Rights Task Force was active. INFORM's Executive Director further noted that three of the NHRC's five commissioners only work part time.

The Forum for Human Dignity (FHD) treasurer said the new commissioners are more active than their predecessors. The NHRC is now paying regular visits to detention centres, and they also inform NGOs about detainees who might need a lawyer. The NHRC holds meetings with legal aid organisations like the FHD once every two months. The FHD refers cases to the NHRC if they find there is a need for the NHRC to visit a detention centre, but the treasurer mentioned that they do not receive any feedback from the NHRC about actions taken.

Similarly, the Executive Director of Home for Human Rights (HHR) took the view that the current slate of NHRC Commissioners is doing a much better job than the previous one. The regional offices are making regular visits to detention centres, and the Commission also informs HHR about cases. The HHR Executive Director was of the opinion that the current Commissioners “speak the right language,” but there are limitations on their work, as they cannot embarrass the government. The Coordinator of the Centre for Human Rights and Development also indicated that the NHRC is

limited by the fact that it cannot discredit the government, and added that it is a government organ with its own agenda.

Furthermore, the lawyer with the Institute of Human Rights (IHR) stated that the NHRC is limited by the fact that it can only make recommendations, and cannot take any action against authorities. The lawyer mentioned that the NHRC makes inquiries in cases involving torture allegations for breach of fundamental human rights, especially in cases where the time limit of 30 days for filing a case has been exceeded. According to the IHR lawyer, there is no time limit for filing cases with the NHRC. The lawyer added that the NHRC may then recommend that a case be taken up by the Department of the Attorney-General, or may also sometimes involve legal aid NGOs directly in such cases.

Both the Government Agent in Mannar and the Mannar Bishop noted that the NHRC does not have a regional office in Mannar, but they both pointed out that the local Human Rights Citizens Committee is monitoring arrests and people held in custody. The Bishop mentioned that he had personally asked the NHRC to establish an office in Mannar, but without success.

II. 4.2 President's Committee on Unlawful Arrests and Harassment

According to the Chair of the President's Committee on Unlawful Arrests and Harassment (PCUAH), which is also known as the Anti-Harassment-Committee or the Committee of Inquiry into Undue Arrest and Harassment, the Committee was established in 1998 with Lakshman Jayakody as chair. As of October 2001, the chair was the Minister of Justice, Batty Weerakoon. The fact-finding mission was able to meet with Weerakoon and Jayakody, who now serves as coordinator of the Committee. Weerakoon stated that the mandate of the Committee is to look into harassment of any citizen in Sri Lanka, but due to the conflict with the LTTE most of the cases are related to the Tamil community. The Committee deals with complaints from all over the country, including the Eastern Province and the South. The Chair added that the Committee does not undertake its own investigations, but looks into complaints received from organisations and individuals. The Committee has an office in the Ministry of Justice, with a 24-hour telephone and fax service. The Chair further stated that Committee members meet once a week to deal with the complaints received.

The Coordinator of the PCUAH stated that the Committee has received more than 1,000 complaints since its inception in 1998. A total of 438 cases had been finalised by the end of 2000. In addition to the 141 cases pending at the beginning of 2001, the Coordinator indicated that the Committee had received 472 complaints between 1 January and 10 October 2001 (for further details, please refer to Appendix 5). According to the Coordinator, the complaints are received mainly from Tamil people and at least 50 per cent of the cases are related to persons held in prison, especially Kalutara and Boosa. The Coordinator stated that these people call upon the PCUAH to take action in order to have their cases concluded. The Coordinator further indicated that another 20 to 25 per cent of the cases are related to people held in police custody, who want the Committee to inquire into the reasons for the arrests. The remaining 25 per cent of cases are related to Sinhalese people with various issues, according to the Coordinator.

The PCUAH Coordinator stated that there are delays in disposing of cases, both in police custody and in detention centres, and delays in processing cases. Regarding complaints received from prisoners who are held in custody without trial, the Coordinator indicated that some of these are

from people who have been remanded for 5 to 10 years without trial. Furthermore, the Coordinator indicated that the Committee has also received complaints regarding court cases that have dragged on for two to three years. The Coordinator pointed out that the Committee is careful not to intervene directly in court cases, but rather refers cases to the Department of the Attorney-General for action. The PCUAH may also contact NGOs to provide legal aid. According to the PCUAH Coordinator, it would take about eight months to process this type of complaint.

The Coordinator of the PCUAH stated that while complaints related to harassment at checkpoints include women who have been sexually abused, they are not numerous. In cases related to sexual abuse of women, the PCUAH would request a medical report on behalf of the victim and find a lawyer to proceed with the case. According to the PCUAH Coordinator, the Committee would follow such cases until such time as they are brought to court.

The PCUAH Coordinator stated that it recently had received some cases related to torture by the police force in the Eastern Province. The Committee is currently investigating these cases, which are few, and has requested a meeting with the Inspector General of Police.

The Commissioner of the National Human Rights Commission (NHRC) noted that there is no legal basis for the work of the PCUAH, and that to some extent the Committee duplicates the work of the NHRC, as the PCUAH also deals with cases related to conditions of arrest. The Commissioner found, however, that the PCUAH does have a role to play, particularly in cases of harassment at checkpoints. Because these cases do not result in arrest or torture allegations, they fall outside of the mandate of the NHRC or the Supreme Court. The NHRC Commissioner said the Committee is powerful due to its close links with army commanders, and has political “clout,” being headed by a minister with close links to the president.

The treasurer of the Forum for Human Dignity (FHD) was of the opinion that the PCUAH is working efficiently, and that they take action not only in cases related to harassment at checkpoints, but also in cases related to arrest, detention and disappearances. The FHD treasurer mentioned that the PCUAH would ask for reports from police stations and detention centres and summon the Officer-in-Charge, whereas the NHRC would pay visits to detention centres and monitor the situation there.

Similarly, the lawyer with the Institute of Human Rights (IHR) stated that the PCUAH is working efficiently. In particular, the lawyer noted that the Committee has a role to play for prisoners who request it to take action in order to have their case processed in court. The PCUAH refers cases to the Department of the Attorney-General for action. According to the IHR lawyer, prisoners themselves write directly to the Committee. Information about how to contact the Committee is available from other prisoners or lawyers, according to the IHR representative.

The Executive Director of INFORM mentioned that the PCUAH has been an effective mechanism, particularly prior to the appointment of the current NHRC Commissioners. The Executive Director took the view that the PCUAH has much more impact than ordinary lawyers to intervene in cases. Due to the political “clout” of its members, the Committee is able to call the police directly to obtain information. INFORM's Executive Director said the Committee has only a few cases. While the Committee has a secretariat, it is not, according to the Executive Director, taken seriously by the security forces, and there is a problem with gaining access to Committee members.

The Executive Director of Home for Human Rights (HHR) had a positive impression of the PCUAH and stated that it is doing a good job, in particular in relation to monitoring arrests and detentions in Colombo. The Committee would also approach NGOs like HHR to obtain information on clients involved in arrests and detentions. The Executive Director stated that this Committee is more efficient than the NHRC. However, she pointed out that it is difficult for people to access the PCUAH, and there is not much information provided to ordinary people about the Committee.

The Centre for Human Rights and Development Coordinator indicated that while PCUAH members can be influential because of their status as members of parliament, the Committee is intervening in few cases and is not implementing its own recommendations.

II. 4.3 Inter-Racial Committee on Ethnic Harmony

In May 2000, the *Sri Lanka Monitor*, a monthly newsletter published by the British Refugee Council, reported that President Chandrika Kumaratunga had appointed a nine-member committee headed by then-Justice minister G.L. Peiris to ensure the safety of Tamils in southern Sri Lanka. The Committee was named the Inter-Racial Committee on Ethnic Harmony.

The Commissioner of the National Human Rights Commission mentioned that he had been informed about this Committee at the end of September 2001. According to his information, this new committee was in the phase of establishing itself in the Ministry of Justice. The Commissioner further stated that the committee was in charge of setting up a number of citizens' committees in areas with a high concentration of minorities in the South. The local committees would comprise people with well-established social relations in the community, who among other things, would monitor cases of detention at local police stations.

The Forum for Human Dignity treasurer and the Executive Director of INFORM mentioned that they had heard that such a committee was going to be established, but they did not have any information on the committee's mandate.

None of the other sources consulted by the fact-finding mission provided any information on this committee. The First Secretary of The Netherlands Embassy noted that there were too many committees in Sri Lanka, and very little follow up from the government on the work of these committees.

III Entry situation for returning Tamils

The Department of Immigration and Emigration Controller stated that after having passed immigration formalities, all returnees are detained by the Criminal Investigation Department (CID) at the airport for clarification of their identity unless they arrive with a valid Sri Lankan passport. The Controller added that the length of detention depends on each individual case, and may take a few hours to a few days. The returnee is always produced before the Magistrate within 24 hours. The Controller further stated that immigration officers at the airport make photocopies of the returnee's emergency travel document upon arrival, and the returnee can retain the original; this procedure has been in place for more than a year. According to the Controller, there is no registration of arriving returnees or other passengers at the airport.

The CID Director explained that the CID conducts interrogations of returnees for two reasons. First, to investigate whether the person had left the country by illegal means, for example because the person made use of fraudulent documents, and second, to investigate whether the person is wanted by the authorities. In most cases, the interrogation lasts two to three hours, but in some cases the interrogation may last longer. In any case, like the Department of Immigration and Emigration Controller, the Director noted that the returnee would be brought before the Magistrate of Negombo within 24 hours. The CID Director also stated that the returnee would be released on bail provided that the person has somebody to stand surety for him/her and provided that the person is not wanted for criminal activities. According to the Director, there have been no incidents in which surety has not been available and the person therefore had to be remanded in custody. The CID may continue the investigation of the person after his or her release, but most cases are discharged within a week.

The Magistrate of Negombo, whose area of jurisdiction includes Bandaranaike International Airport, stated that in 99 per cent of cases related to returnees, their cases are discharged without charges being laid. The Magistrate, like the CID Director, explained that for a returnee to be released on bail when brought before him, the procedure for release requires that the returnee has a person who stands surety to sign a bond. After release, the Magistrate gives a new date for the CID to forward a report on the investigation, normally within a month. If there is evidence to continue the investigation after one month, a new date is given for a court appearance. Most cases are concluded without charges within a period ranging from two weeks to three months. Between January 2001 and October 2001, only one person was deemed a terrorist, the Magistrate added.

UNHCR explained that the monitoring of returned rejected asylum seekers is within the organisation's mandate in Sri Lanka. After having passed immigration formalities, returnees are generally handed over to the CID at the airport and detained for further identity checks, including those who are returned with an emergency travel document. According to UNHCR, most of them are released on bail within a few hours or on the same day after they have been produced before the Magistrate of Negombo Court. UNHCR stated that a few individuals are held overnight in detention, possibly because the Magistrate is not available on the same day, or because individuals are either arriving at an inconvenient hour, or a large number of people are being returned at the same time.

UNHCR also indicated that a group of some 20 rejected asylum seekers who were being returned from Germany in early 2000 was reportedly detained for two days and one member was detained

for four days. According to UNHCR, there have been a limited number of cases within the last one and a half years in which returnees have been detained for a longer period of time. UNHCR further stated that there was a brief drop in the number of rejected asylum seekers being returned from western countries after the July 2001 attack on the Colombo airport.

The First Secretary of The Netherlands Embassy stated that very few people had been returned from The Netherlands within the last two years. In 2000, 46 rejected asylum seekers were returned under an agreement between the governments of Sri Lanka and The Netherlands. The First Secretary further indicated that between January and October 2001 nine persons were returned under the agreement, and four persons were returned using their own passports. According to the First Secretary, The Netherlands is seeking to extend the existing agreement. She further noted that in 98 per cent of the cases, returnees are released on the same day after being questioned by the CID at the airport. There is no provision for monitoring returned asylum seekers under the agreement between The Netherlands and Sri Lanka, according to the First Secretary.

According to the Attaché of the Embassy of Switzerland, the number of returnees from Switzerland included 176 returnees in 1998, 158 in 1999, 123 in 2000 and 51 returnees between 1 January and 30 September 2001. Among the 51 returnees in 2001, 33 were questioned by the CID at the airport, subsequently produced before the Magistrate of Negombo and released on bail on the day of their arrival. Eighteen were cleared at the airport without being questioned by the CID for reasons unknown to the Attaché. According to the Attaché, there have been no reports of maltreatment during interrogation by the CID at the airport. The number of returnees dropped in 2000, according to the Attaché, because of a delay in the signing of a new return agreement between the governments of Sri Lanka and Switzerland. The low number of returnees in 2001 compared to previous years is due to a drop in the number of applications for asylum in Switzerland, the Attaché added. He indicated that a new scheme, the Return Assistance Programme Sri Lanka, has been operational since 1 November 2000. The programme provides financial assistance for the voluntary return of persons who either have an asylum case pending in Switzerland or who have received a negative decision. The Attaché indicated that out of the 51 people returned in 2001, 13 were voluntary returns under this scheme and 38 were compulsory returns.

Similarly, the treasurer of the Forum for Human Dignity (FHD) stated that all returnees are detained, produced before the Magistrate and released on bail. He was not aware of any recent cases where a returnee had been detained for more than one day. The treasurer indicated that normally a returnee would be out on bail on the same day and given a new date to appear in court. The Criminal Investigation Department would then provide the Magistrate with possible reasons to continue its investigation of the returnee. In the view of the FHD treasurer, it could take from one to six months before a case is concluded. The Forum for Human Dignity had recently closed several returnees' files, all of whom had their cases discharged by the court.

Charges under the "Immigrants and Emigrants (Amendment) Act of 1998"

In cases where the returnee is alleged to have used false documents to leave the country, the Controller stated that he or she would not be prosecuted upon return, as the prosecutor cannot prove that the person had left the country illegally, unless he or she is actually caught with false documents. However, the Controller indicated that if a person enters the country on false documents, he or she will be prosecuted under the "Immigrants and Emigrants (Amendment) Act of

1998.” Both the Director of the CID and the State Counsel who heads a separate unit set up in the Department of the Attorney-General to deal with cases under the “Immigrants and Emigrants (Amendment) Act of 1998” stated, with regard to someone suspected of an illegal departure, the person would only be charged if found in possession of fraudulent documents or came forward and admitted leaving the country using such documents.

UNHCR was not aware of any cases where returnees have been charged under the “Immigrants and Emigrants (Amendment) Act of 1998” for leaving the country illegally. According to UNHCR, there have been no changes in the procedures for returnees after the attack on the airport, and UNHCR did not have any difficulty gaining access to information on returnees from the CID.

Like UNHCR, the Attaché of the Embassy of Switzerland did not know of any cases of returnees being convicted or charged under the “Immigrants and Emigrants (Amendment) Act of 1998” for leaving the country illegally.

The FHD treasurer stated that while no returnees had been charged under the “Immigrants and Emigrants (Amendment) Act of 1998” for leaving the country illegally, he was aware of cases involving deportees who had been sent back to Sri Lanka along with their false documents. Likewise, the First Secretary of The Netherlands Embassy stated that she knew of only one case in which a returnee had been charged under the Act, involving an individual who was found in possession of a forged seaman's book.

The Institute of Human Rights (IHR) lawyer took the view that there are links between corrupt CID officers and lawyers who extort large sums from family members of detained returnees. For example, the IHR lawyer pointed to a case from June 2001 in which a returnee who had stayed in Switzerland for four years had been detained for 12 hours following arrival by the CID as an LTTE suspect. A lawyer had intervened and charged the family members SLR25,000. According to the IHR lawyer, the IHR had later intervened at the request of the Swiss Embassy, and the returnee had been released on bail.

The Executive Director of INFORM said that money is being extorted by corrupt officers at the airport from returnees and Tamils who are entering the country on foreign passports. According to the Executive Director, there is a network of lawyers, immigration officers and CID officers at the airport involved in extortion; this has been going on since 1999. The Executive Director has heard stories of returnees being arrested under the Prevention of Terrorism Act on suspicion of involvement in terrorist activities, taken to Negombo prison and told to contact a certain lawyer, who asks for SLR5,000, which is then shared among lawyers and officials, before the detainee is released. The INFORM Executive Director was not aware of specific cases, but was in the process of trying to collect information from persons in Negombo prison.

Similarly, the Executive Director of Home for Human Rights had heard that returnees are detained at the airport upon arrival, and that the immigration and CID officers are extracting money from people who have been to western countries. The Executive Director stated that this situation is particularly true in the case of returnees from Switzerland, who return with 300 Swiss francs, a fact known to the officers at the airport.

The Administrator of the Family Rehabilitation Centre (FRC) also noted that CID staff at the airport is corrupt and expects money from returned asylum seekers. The Administrator had heard of such

cases, but was not aware of any particular case. The FRC Administrator further noted that the relatives of returned asylum seekers should be informed of their arrival, to stand surety for them to be released on bail.

III. 1 Treatment of returnees after they leave the airport

UNHCR stated that the procedures at the airport were changed in 2000; immigration officers now make a copy of returnees' emergency travel document and returnees can retain the original, which helps facilitate their application for new documents and registration with the police in Colombo (also see page 19).

As noted earlier, UNHCR explained that returnees who have been detained by the Criminal Investigation Department (CID) upon arrival at the airport are normally released on bail at the Negombo Court. While UNHCR believes that returnees' cases are generally closed when they re-appear in court one to two months later, it does not always receive feedback from the Court and has difficulty following up on cases after returnees are released.

UNHCR was not aware of any cases where returnees had been forced to go back to their places of origin when they were unable to obtain an extension of their registration with the police in Colombo. However, according to UNHCR, the returnees who are from the northern and eastern parts of the country, and who cannot go back to their own areas due to the security situation, are often returning to a difficult situation in Colombo. UNHCR indicated that some of them have to stay in lodges in Colombo where living conditions are often substandard and they face problems making a living.

The Attaché of the Embassy of Switzerland stated that the Swiss Embassy provides transport for the returned asylum seekers from the airport to a special reception centre for returned asylum seekers, which the Embassy operates in cooperation with the Red Cross.⁴⁰ In October 2001, five persons were staying in the centre, where they may stay for a maximum of 45 days. The management of the Red Cross Centre registers the returnees at the local police station. However, only 20 to 25 per cent of the returnees use the airport shuttle bus and reception centre, as most returnees, according to the Attaché, are met upon arrival by family members and friends.

The Attaché indicated that the Swiss Embassy provides assistance to obtain a National Identity Card (NIC), if the returnee does not have one. The Attaché stated that the Front Office, established by the Department of Registration of Persons to facilitate the issuance of identity documents to individuals from conflicted affected areas, is working efficiently, and NICs are normally issued within 10 days, if the returnee presents a letter from the Embassy, a copy of the police registration in Colombo and the emergency travel document.

According to the Attaché, if returnees are not staying in the Red Cross Centre the Swiss Embassy rarely receives feedback. The Attaché also stated that the Embassy has an agreement with Home for Human Rights to assist returned asylum seekers, when they are required to appear again in the court in Negombo after being released on bail. According to the Attaché, they may be given a

⁴⁰ The reception centre has moved and is currently situated in Borella district in Colombo. This district is not a Tamil area of the city, which according to the Attaché is an advantage because there are fewer police checks.

second or third date after the first court appearance and if the CID claims that it needs more time for investigation, but in fact most cases are dropped.

The Executive Director of INFORM stated that police officers in the Tamil areas of Colombo are familiar with the emergency travel document, which can be used for police registration. According to the Executive Director, returnees do not face the same problems as they did three or four years ago in obtaining police registration in Colombo. She stated that it is not so much a question of suspicion raised against returnees, but more a question of extorting money from them. She noted that there had been two cases in 1999 of police officers being charged for extorting money in connection with police registration. Since this time, the police in Colombo have become more careful, but in Negombo it is still a big problem. The Executive Director stated that INFORM is, however, concerned about the many checkpoints between the airport and the city, where returnees could get into trouble, if they have no other identity document than the emergency travel document. She stated that the biggest difficulties encountered by returnees are finding employment and accommodation in Colombo, if they cannot stay with relatives or friends.

The Forum for Human Dignity (FHD) treasurer said that some returnees are having problems with police registration in Colombo. In 2000 the FHD had two or three cases of returned asylum seekers who were forced to go back to the North or East. He was also aware of cases where corrupt CID officers and touts working with them had asked returnees for money in order to delay completion of the investigation of the individuals' background. By delaying this investigation, the returnees' bail period would be extended, which in turn would provide them with a valid reason to extend their police registration in Colombo.

Furthermore, the treasurer indicated that most returnees want to go abroad again and face financial problems, as they cannot get any employment in Colombo. According to the FHD treasurer, these people are a vulnerable group and are exploited by the LTTE for the purpose of performing menial work, harbouring people or providing information in return for money. The treasurer stated that there should be assistance to sustain returnees.

The Executive Director of Home for Human Rights said that police stations in Colombo are reluctant to register returnees, even if they have official letters from an embassy. She, like the FHD treasurer, noted that most returned asylum seekers want to leave the country again.

The Administrator of the Family Rehabilitation Centre (FRC) took the same view as the FHD treasurer that returnees, who come from the northern and eastern areas and are returned to Colombo, are not given sufficient assistance to re-integrate. It is impossible for them to go back to their area of origin due to the security situation and difficult for them to make a living in Colombo. According to the FRC Administrator, the returnees could be useful citizens if the government would provide assistance for them to re-integrate.

IV Departure situation

IV. 1 Control arrangements at Colombo airport

The Department of Immigration and Emigration Controller stated that individuals leaving the country must present their passports in person, and travel agents cannot present the passports on behalf of a group of travellers. The Controller noted that on departure it is generally sufficient to present a passport and, if necessary, a visa, and usually identity is not checked against any other documents. According to the Controller, immigration officers also check the names of departing passengers against lists of wanted persons provided by the Criminal Investigation Department (CID) and the Terrorist Investigation Department (TID). These lists are updated daily. However, because the check is performed manually, the Controller stated that it is possible that individuals wanted by the authorities are not always detected.

According to the Controller, there has been a decrease in the number of cases of people being caught leaving on false documents, which was deemed to be due in part to the impact of the “Immigrants and Emigrants (Amendment) Act of 1998,” which provides for a more severe punishment than was possible under the original Act, and due in part to stricter controls at the airport, including those implemented by embassies’ immigration control officers.

The Controller further noted that most people leave on genuine passports for Singapore, Hong Kong and Maldives, i.e. destinations where no visa is required for Sri Lankan citizens. According to the Controller, the travel documents are then replaced by false ones at other destinations. The Controller also pointed out that people who leave Sri Lanka in an irregular fashion more often use boats, due to airport controls that are more strict than previously. According to the Controller, there have been no changes to entry and exit procedures after the LTTE attack on the Katunayake Air Base on 24 July 2001.

The Director of the Criminal Investigation Department stated that the CID is involved in departure control only if cases are referred to it by immigration officials or airline staff. The Director added that the CID provides lists of wanted people to immigration officers only. In the case of individuals who have a court appearance pending, the court can issue an order forbidding them from leaving the country. Otherwise, such individuals are allowed to travel abroad provided that the court is notified of their intentions.

UNHCR was aware of cases where people who try to leave the country illegally on false documents have been charged under the “Immigrants and Emigrants (Amendment) Act of 1998,” but had no information on the number of cases. UNHCR stated that the Sri Lankan government is reportedly making significant efforts to reduce the level of illegal emigration. UNHCR stated that controls at the airport have increased, and today Sri Lankan passports are often photocopied at the airport prior to departure. Like the Controller above, UNHCR stated that many illegal departures take place from Negombo Port by boat, which may in part be due to stricter controls on airport departures.

UNHCR took the view that it may be difficult for a person to leave the country if the person is wanted by the authorities. UNHCR stated that a wanted person risks detection not only at security

controls within the airport itself, but also at checkpoints in Colombo and on the road to the airport. According to UNHCR, it would appear that the checks performed in Colombo do have an impact, and the authorities seem to be able to communicate information on wanted persons all over the country, or at least to the parts under its control.

The Attaché of the Embassy of Switzerland also noted that illegal departures take place by boats from Negombo Port. As an example, the Attaché pointed to a case in early 2001, where a boat with illegal emigrants had been involved in a collision with an Indian trawler. It was discovered that the passengers on board were illegal emigrants leaving for Italy.

The Attaché of the Embassy of Switzerland was of the opinion that controls at Bandaranaike International Airport in Colombo are inefficient and, like other interlocutors, pointed to the fact that there is no computerised system to check records of departing passengers. As an example, the Attaché mentioned two cases involving persons who had court cases pending when leaving Sri Lanka. According to the Swiss Attaché, these persons had obtained visas to go to Switzerland in order to have their asylum applications assessed in Switzerland by the Home Office. According to the Attaché, one of the cases involved a woman who had been raped in detention in Trincomalee and afterwards had filed a case of breach of fundamental human rights against the security forces. The Attaché stated that the woman had a case pending in the Supreme Court when she was leaving the country. According to the Attaché, the other case involved a person who had been remanded as an LTTE suspect and was released on bail. The case was pending in court, and the person was able to leave the country. In both cases, the persons had been accompanied by a staff member from the Swiss Embassy on departure from Sri Lanka.

IV. 2 Punishment for illegal departure

The Director of the Criminal Investigation Department (CID) pointed out that a lot of effort is made to prevent illegal departure. The Director stated that, between January and October 2001, the CID had investigated 920 cases under the “Immigrants and Emigrants (Amendment) Act of 1998,” out of which approximately 20 per cent had led to convictions. The Department of Immigration and Emigration Controller could not give the number of cases prosecuted under the “Immigrants and Emigrants (Amendment) Act of 1998” for illegal departure, but mentioned there have been several.

The Controller further stated that there is a committee to review the Act and the amendments to the Act. The Committee has prepared recommendations which must be approved by Cabinet. The approval process could take one to several years, according to the Controller. Proposed amendments include stiffer fines and imprisonment for human smugglers. The Controller stated that under current legislation penalties for human smugglers and the smuggled people are the same. The Controller indicated that other amendments include investigative powers for immigration and police officers in cases of public servants facilitating smuggling. Furthermore, the Controller stated that a reward fund for identifying smugglers is also included in the proposed amendments. According to the Controller, there are “black sheep” everywhere, including within both the immigration department and the police force. He referred to cases involving immigration officers at the airport which had been reported to the Public Service Commission. The Controller was aware of four or five cases pending in October 2001 which were being investigated by the CID. In one instance, an

individual had been found guilty but subsequently launched an appeal. This case also remained pending as of October 2001.⁴¹

The State Counsel who heads a separate unit established in the Department of the Attorney-General to deal with cases under the “Immigrants and Emigrants (Amendment) Act of 1998” stated that cases falling under the Act had previously been dealt with by immigration and police officers, but a new procedure was established in May 2001 and now all cases are referred to the Department of the Attorney-General. According to the State Counsel, as of May 2001, when he took over these cases, 380 persons had been charged under the Act and remanded to Negombo prison. The State Counsel added that a total of 195 cases were still pending in the last week of September 2001. Forty per cent of the 380 cases involved deportees who were discharged due to lack of evidence of illegal departure. According to the State Counsel, most of the other cases are against people who were caught on departure with false documents (false passports or visas).

The State Counsel indicated that when a bearer of a false passport is caught upon departure, a statement must be recorded by the CID in which the name of the facilitator, that is to say the individual responsible for obtaining the false document on behalf of the traveller, should be given. According to the State Counsel, this does not always happen, as some CID officers are reluctant to record facilitators' names. Under the terms of the Act there is no provision for bail, according to the State Counsel. However, he added that in practice bail had been given until January 2001, when a new Magistrate was appointed in Negombo who follows the letter of the law and refused to grant bail. According to the State Counsel, it takes at least three months before a trial case is started, during which time the accused is remanded. The remand period is deducted from the sentence. If an accused person agrees to give the name of the facilitator in a statement before the Magistrate, he or she would be released.

In contrast to the figure provided by the CID Director, the Magistrate of Negombo stated that some 300 cases had been filed in the Negombo Court under section 45 of the “Immigrants and Emigrants (Amendment) Act of 1998” since January 2001.⁴² According to the Magistrate, there have been only two boatloads of travellers leaving the country from Negombo Port who have been detained under the Act in 2001, but almost daily cases from the airport. The Magistrate confirmed that, under the terms of the Act, the accused person is remanded to prison with no right to bail. The Magistrate indicated that the cases include smugglers as well as smuggled people, who are caught upon departure or deported from another country with false documents. The minimum sentence for illegal departure is a prison term of six months and a fine of SLR50,000. According to the Magistrate,

⁴¹ Documentary research was undertaken in January 2002 to update the status of these cases. However, no additional information could be found.

⁴² Under the terms of section 45, an individual is deemed to have committed an offence if he or she, *inter alia*, "(a) enters or remains in Sri Lanka in contravention of any provision of this Act or of any order or regulation made thereunder; (b) leaves Sri Lanka in contravention of any provision of this Act or of any order or regulation made thereunder; (c) in reply or in relation to the Minister, or any authorised officer, or other person lawfully acting in the execution of the provisions of this Act or of any order or regulation made thereunder, makes or causes to be made any false return, false statement or false representation; (d) forges, alters or tampers with any passport, whether issued in Sri Lanka or elsewhere, or any visa or endorsement thereon; (e) forges, alters or tampers with any certificate; (f) without lawful authority uses or has in his possession any forged, altered or irregular passport, or any passport with any forged, altered or irregular visa or endorsement; (g) without lawful authority uses or has in his possession any forged, altered or irregular certificate."

there are individuals who have been remanded to the prison in Negombo for up to six months, depending on the accusation and the proceedings of the lawyer. Cases include women as well as men, but according to the Magistrate no minors are held. If the person is found guilty, the period in remand is deducted from the prison sentence.

The Magistrate of Negombo indicated that some of the cases have been filed in the Court of Appeal to have the persons released on bail. The Magistrate added that in practice these people are granted bail after two to six months, depending on the case. The Magistrate also stated that the Court of Appeal is very lenient with clients of facilitators, but very harsh with facilitators. According to the Magistrate, 60 per cent or more of the remanded people are Tamils. Almost all are represented by a lawyer in court, but the Magistrate was not aware of any NGOs being involved in providing free legal aid in such cases. According to the Magistrate, the authorities are more interested in discovering the facilitators of human smuggling than in the “victims.” The Negombo Magistrate, like the State Counsel, indicated that if an accused person makes a statement before the Magistrate naming the facilitator, the person would be released; and added that the person would later appear as a crown witness in a case against the facilitator. The Magistrate further stated that normally the CID investigates cases before the accused is released, but recently, there was a case where the accused had been released after giving a name that proved false.

The treasurer of the Forum for Human Dignity (FHD) stated that 40 clients of his organisation are being held in Negombo prison under the terms of the “Immigrants and Emigrants (Amendment) Act of 1998” for attempting to leave the country illegally on false documents. As other interlocutors stated, the Act does not allow for the granting of bail, and thus some of these individuals have been in detention since January 2001. The FHD treasurer further indicated that these individuals, some of whom are mothers with children, are being held in prison with “normal criminals.”

The Institute of Human Rights (IHR) lawyer stated that, under the terms of the “Immigrants and Emigrants (Amendment) Act of 1998,” the minimum sentence for illegal departure was six months in prison and a fine of SLR50,000. The lawyer noted that many cases are pending in the Negombo Court involving persons who are remanded and charged under the Act for attempting to leave the country on false documents. The IHR had one case in which the client had been in remand for three months. The IHR had filed the case in the Court of Appeal to have the client released on bail. The IHR lawyer was of the opinion that the authorities should punish the agents and not what he considered to be “innocent people.”

The Executive Director of INFORM noted that there has been an increasing number of cases over the last three years of persons leaving Sri Lanka on false papers, and persons returning who had been deported from other countries, having been caught with false papers.

V Documentation

V. 1 Passports

The following information regarding passport issuance procedures was obtained from the Controller of the Department of Immigration and Emigration.

Application and issuance procedures

According to the Controller, more than 1,000 passports are issued per day. A total of 321,027 passports were issued in 2000.

Individuals wishing to apply for a passport may do so in person in Colombo or at one of 268 Divisional Secretariats located throughout the country. The Department also operates a mobile office which travels to areas of the North and East where individuals may experience difficulty reaching a Divisional Secretariat. As an example of the mobile office's activities, the Controller stated that it spent two days in Vavuniya District in July 2001, during which time it received 700 passport applications.

Individuals submitting a passport application to a Divisional Secretariat normally must do so in person. The Divisional Secretariat then forwards the application to Colombo for processing. Once the passport has been issued, it is mailed directly to the applicant.

In Colombo, individuals normally must present themselves in person at the passport office in order to apply for and receive their passport. However, an exemption from this requirement is granted to some applicants, for example "VIPs" such as government officials and company executives.

The passport office in Colombo offers applicants a same-day service, available between 9:00 a.m. and 12:00 p.m. The fee for this service is SLR5,000 for a passport valid for travel to all countries and SLR2,000 for one valid only for travel in the Middle East and South Asia. Otherwise, passports are normally issued within 10 business days. The passport office accepts such applications between 9:00 a.m. and 3:00 p.m., and charges a fee of SLR2,500 for a passport valid for travel to all countries, and SLR500 for one valid only in the Middle East and South Asia. According to the Controller, roughly two-thirds of applicants elect the same-day service.

Required documents

In order to apply for a passport, applicants must submit an application form, three certified photographs, along with their National Identity Card (NIC) and birth certificate.

The names of children under 16 years of age are normally entered into the passport of one of their parents. For a child to obtain his or her own passport, the written consent of both parents is required, along with copies of their passports. In cases of separation or death of one of the parents, the written consent of one parent would be sufficient, provided that documentation can also be provided confirming the other parent's death or a court order granting sole custody to the parent supporting the application.

According to the Controller, approximately 10 to 15 passports are issued per day to individuals who have not presented an NIC. In most instances, these passports are issued to children under the age of 16 years. The Controller added that some of these cases would also involve elderly individuals who do not have an NIC.

Replacement of a lost or stolen passport

Individuals whose passport is lost or stolen must immediately notify the police and ask for a report. For a replacement passport to be issued, individuals must attach the police report to their application, as well as pay a SLR10,000 fine in addition to the normal processing fee. According to the Controller, records are not kept as to the number of times individuals have lost their passport.

Screening procedures

Upon receipt of a passport application, the Department of Immigration and Emigration consults a watch list of armed forces deserters and individuals wanted by police and Interpol, to ensure that the applicant is not on this list. According to the Controller, an NIC serial number is not required for this search; merely the applicant's name and date of birth.

National identity cards and birth certificates submitted by passport applicants are also checked by the Department. As an example of the type of check performed, the Controller stated that NIC serial numbers are entered into a computer for analysis. If for any reason the number is found to be invalid, the passport application is flagged for further investigation.

In cases involving birth certificates suspected to be fraudulent, the document would be verified with the Department of Registration of Births, Marriages and Death. The Controller indicated that while there had been a high degree of cooperation with the Department of Registration of Births as recently as late 2000, staff shortages within this office have led to delays in birth certificate verification.

According to the Controller, a passport application involving the submission of suspected fraudulent documents would not be processed until an investigation into the matter has been completed. The Controller further stated that one or two cases of fraudulent documentation, involving either birth certificates or National Identity Cards, are discovered each week.

The passport application process has been computerised since 1996, when the Department began to issue "M" series passports. Information pertaining to all "M" series passports may be found in a departmental database, including personal data, a scanned photograph and signature and codes identifying immigration officers responsible for the processing and issuance of the passport. According to the Controller, "L" series passports, which the Department ceased to issue in 1996, are not included in the database. Approximately 50 per cent of the 1.2 million "L" series passports issued until 1996 are out of service, with all the remainder set to expire no later than 2006. The Controller did not indicate whether any passports, other than those belonging to the "L" or "M" series, remain valid and/or are included in the departmental database.

The Controller claimed that falsification of an "M" series passport is very difficult, and the Department is only aware of a "negligible" number of such cases. Rather, irregularities are likely to result from individuals' use of fraudulent documents when applying for a passport. The Controller

further indicated that two or three cases of suspected corruption involving clerks working in the passport office have been detected. These cases remained under investigation as of October 2001.

According to the First Secretary of the Embassy of The Netherlands, while passports and NICs are usually genuine, the information on which they are based may be false. The First Secretary added that there are often problems in connection with birth certificates.

The Attaché at the Embassy of Switzerland indicated that it might be possible for an individual who paid a sufficiently large bribe to obtain a passport using false documents.

V. 2 Birth Certificates

The following information regarding birth certificate issuance procedures was obtained from the Assistant Registrar General of the Office of the Registrar General.

Application and issuance procedures

Registration of births is undertaken by the registrar's office in the district where the birth occurred. In the case of a child born in a hospital, the registrar's office would register the birth and issue a birth certificate following receipt of a hospital report. If the child was born at home, the parents would be required to inform the Grama Sevaka, who would make his or her own enquires and then issue a report to the registrar's office. However, if registration does not occur within three months of a child's birth, parents are required to complete a special application form, which they would submit to the district registrar's office, along with a report issued either by the hospital or Grama Sevaka. There is no cost to register a birth.

According to the Assistant Registrar General, the practice of issuing birth certificates in English ceased in 1958. Since that time, birth certificates have been issued only in Sinhalese or Tamil. The Assistant Registrar General added, without providing additional details, that roughly 10 per cent of births in Sri Lanka are not registered.

Issuance of copies of birth certificates

Individuals may obtain a copy of a birth certificate whether they are living in Sri Lanka or in another country. To do so, they must complete an application form and affix to it a SLR5 stamp, and mail the form to the Office of the Registrar General in Colombo. The Office would process the application and send a copy to the requester by mail.

According to the Assistant Registrar General, Sri Lankan diplomatic missions abroad can supply individuals with the appropriate application form and stamp. Individuals can also channel their application for a copy of a birth certificate through the mission, in which case a date stamp would be placed on the document when it is received by the Ministry of Foreign Affairs' Consular Division in Colombo.

The Assistant Registrar General further indicated that missions abroad are empowered to act as an additional registrar in order to register births, deaths and marriages of Sri Lankan citizens.

According to the Assistant Registrar General, the Office does not consult with police or review a watch list of individuals wanted by the authorities before issuing birth certificates.

The Commissioner of the Department of Registration of Persons, responsible for the issuance of National Identity Cards, also indicated that it would be possible for an individual wanted by the authorities to obtain a birth certificate or copy of a birth certificate.

V. 3 Death Certificates

The following information regarding death certificate issuance procedures was obtained from the Assistant Registrar General of the Office of the Registrar General.

Application and issuance procedures

According to the Assistant Registrar General, death certificate application procedures vary according to whether the individual died in or out of a hospital. If he or she died in a hospital, a family member would submit an application form, along with the presiding physician's declaration, to the registrar's office in the district where the deceased lived. The certificate would then be issued within two or three days. There is no fee for this service.

If the death occurred outside of a hospital, one must inform the Grama Sevaka in one's area, who would confirm the death through his or her own enquiries, and then issue a report to this effect to the registrar's office. Having received this report, the registrar's office would then issue the death certificate.

Issuance of copies of death certificates

The procedure governing the issuance of copies of death certificates is the same as that governing the issuance of copies of birth certificates.

V. 4 Marriage Certificates

The following information regarding marriage certificate issuance procedures was obtained from the Assistant Registrar General of the Office of the Registrar General.

Application and issuance procedures

Registration of marriages is undertaken by the office of the registrar in the district where the marriage occurred. There is no cost to register a marriage and obtain a marriage certificate, provided that the couple is willing to wait a minimum of 14 days following the date of the wedding. Should they wish to register their marriage within the first 14 days, they must pay a processing fee of SLR30.

According to the Assistant Registrar General, the Office of the Registrar General neither issues divorce certificates nor makes any change to its record of marriages following a divorce. When individuals complete an application form to register a marriage, they are asked whether or not they had been previously married. If they indicate that they had been married, they are required to produce a divorce certificate which is issued by a Magistrate. However, the Assistant Registrar General indicated that the Office does not conduct a search of its records to determine whether or not an applicant had been previously married, adding that his office simply does not have the capacity to perform such a search.

Issuance of copies of marriage certificates

The procedure governing the issuance of copies of marriage certificates is the same as that governing the issuance of copies of birth certificates.

V. 5 Corrections to Birth, Death and Marriage Records

According to the Assistant Registrar General, corrections can be made to the Office's birth, death and marriage records by submitting a completed application, along with a SLR5 stamp, to a district registrar's office.

V. 6 National Identity Cards (NICs)

The following information regarding National Identity Card issuance procedures was obtained from the Commissioner of the Department of Registration of Persons.

Application and issuance procedures

National Identity Cards (NICs) are issued only to individuals who are both citizens and residents of Sri Lanka, with an exception made for those brought to work on tea plantations before 1949. Such individuals are eligible for an NIC provided that they can prove they were plantation employees in Sri Lanka before 1949.

Individuals normally obtain their first National Identity Card at the age of 16 years. Applications forms are issued by the Department of Registration of Persons to approximately 10,000 schools across the country, which are completed by students and "certified" by the school principal. Students are not asked to present a birth certificate or any other documentation in support of their application. According to the Commissioner, it takes between two and four weeks for the Department to process the applications and mail the NICs to the schools. Approximately 400,000 NICs are issued annually in this way.

Those who leave school before the age of 16 years are required to follow the normal NIC application procedure. This entails submission of one's application form, birth certificate and three photographs to the Grama Sevaka in one's area. He or she then forwards the application to the Department for processing. Provided one's application is in order, it generally takes four weeks to issue an NIC under these circumstances.

However, if there is any suspicion regarding documentation provided in support of the application, processing would be suspended until completion of an investigation.

Replacement of a lost or stolen NIC

According to the Commissioner, roughly 200,000 replacement or corrected NICs are issued every year. Individuals whose NIC is lost or stolen must immediately notify the police and ask for a report. For a replacement to be issued, individuals must attach the police report to their application, which is channelled through the Grama Sevaka, along with a SLR15 stamp and the serial number of the old NIC. If one cannot provide the serial number, one must submit one's birth certificate instead. The Commissioner stated that the serial number of a replacement NIC is always the same as that of the original.

Corrections to an NIC

Individuals wishing to correct or update personal information contained in an NIC can do so by submitting an application form, a SLR15 stamp and documentation supporting the requested change, for example a marriage certificate. The Commissioner noted that mistakes in date of birth information were common in the early 1970s.

Document integrity and verification

According to the Commissioner, the NIC serial number consists of nine digits, of which the first six denote the year, month and date of birth, followed by one which indicates the holder's sex. Men are denoted by a number ranging from 0 to 4; women are denoted by a number between 5 and 9. The Commissioner also noted that each NIC contains 13 security features. However, he indicated that some were secret and he did not wish to discuss them.

The Department can authenticate NICs. This is done manually and generally requires two or three days to complete.

Front Office

According to an Assistant Commissioner at the Department of Registration of Persons, the Front Office remains in operation and continues to assist individuals from conflict affected areas, including asylum seekers who have returned to Sri Lanka, to obtain National Identity Cards, birth certificates and other identity documents. The Front Office employs a total of five officers, three of whom can speak Tamil.

The Assistant Commissioner stated that individuals wishing to replace a lost or stolen NIC are "normally" required to present themselves in person at the Front Office. In addition to the completed application form and three photographs, they must submit a copy of their police registration, a police report documenting the loss of the original card and their birth certificate. If they do not have a birth certificate, they can channel an application for one through the Front Office. In instances where no birth certificate is available in the central registry archives, applicants are required to obtain a certificate from their Grama Sevaka.

The Assistant Commissioner also stated that the Front Office receives between 30 and 50 NIC applications per day. Furthermore, he indicated that NICs processed by the Office are generally issued within five days. The Front Office has no backlog of pending applications. The Assistant Commissioner added that 95 per cent of individuals applying for NICs at the Front Office request that they be issued in Tamil.

The First Secretary of the Embassy of The Netherlands stated that the Front Office provides fairly quick service to individuals in need of identity documents, including returned asylum seekers. According to the Attaché of the Embassy of Switzerland, the Front Office operates in an efficient manner, and normally issues NICs within 10 days of application. The Executive Director of Home for Human Rights stated that while there are some problems with the Front Office, it is playing a helpful role in facilitating access to identity documents by individuals from the conflict zones.

However, the Executive Director of INFORM indicated that the Front Office is no longer working "so well," due to an insufficient number of Tamil-speaking personnel and a general lack of resources. The treasurer of the Forum for Human Dignity stated that the issuance of birth

certificates through the Front Office remains problematic, because of difficulties in accessing birth records in conflict affected areas. The treasurer added that people are making use of the Front Office, and that his organisation has referred a number of individuals to it. However, because these individuals did not report back, he could not provide an assessment of the Front Office's effectiveness in these cases.

V. 7 Documents required for domestic air travel

According to the Assistant Superintendent of Police in charge of the Criminal Investigation Department's detachment at Bandaranaike International Airport, individuals must present their National Identity Card in order to board a domestic flight. However, the Assistant Superintendent indicated that an NIC is not needed by minor children travelling with their parents. In the case of individuals whose NIC has been lost or stolen, they would be required to present a police report substantiating the loss.

VI References

Bishop, Roman Catholic Diocese of Mannar, Mannar. October 2001. Interview with Rayappu Joseph, Bishop of Mannar.

British High Commission, Colombo. October 2001. Interview with Colonel Mark Weldon, Defence Adviser.

Centre for Human Rights and Development (CHRD), Colombo. October 2001. Interview with N. Kandasamy, Coordinator.

Criminal Investigation Department (CID), Sri Lanka Police, Colombo. October 2001. Interview with Asoka Wijetilleke, Director.

_____, Colombo. October 2001. Interview with Neville Guruge, Assistant Superintendent.

Department of the Attorney-General, Colombo. October 2001. Interview with Anoozer, State Counsel.

_____, Prosecution of Torture Perpetrators Unit, Colombo. October 2001. Interview with Palitha Fernando, Deputy Solicitor General.

Department of Immigration and Emigration, Colombo. October 2001. Interview with N. Bambarawange, Controller of Immigration and Emigration.

Department of the Registrar General, Colombo. October 2001. Interview with Nelson Silva, Assistant Registrar General.

Department of Registration of Persons, Colombo. October 2001. Interview with Allam, Assistant Commissioner.

_____, Colombo. October 2001. Interview with K.J.V. Ranasinghe, Commissioner.

Embassy of The Netherlands, Colombo. October 2001. Interview with Anneka Schutter, First Secretary.

Embassy of Switzerland, Colombo. October 2001. Interview with Mathias Keusch, Immigration Attaché.

Family Rehabilitation Centre (FRC), Colombo. October 2001. Interview with C.T. Jansz, Administrator.

_____, Colombo. October 2001. Interview with W. Diyasena, Executive Director.

Forum for Human Dignity (FHD), Colombo. October 2001. Interview with M.K.P Chandralal, Treasurer.

Government Agent of Mannar, Mannar. October 2001. Interview with V. Visuvalingam, Government Agent.

- Government Agent of Vavuniya, Vavuniya. October 2001. Interview with K. Ganesh, Government Agent.
- Home for Human Rights (HHR), Colombo. October 2001. Interview with Sherine Xavier, Executive Director.
- _____, Colombo. October 2001. Interview with V.S. Ganesalingam, Attorney.
- INFORM, Colombo. October 2001. Interview with Sunila Abeysekera, Executive Director.
- Institute of Human Rights (IHR), Colombo. October 2001. Interview with K. Ravindran, Lawyer.
- International Committee of the Red Cross (ICRC), Colombo. October 2001. Interview with Isabelle Barras, Head of Delegation.
- International non-governmental organisation. October 2001. Interview with representative wishing to remain anonymous.
- Legal Aid Foundation (LAF), Vavuniya. October 2001. Interview with M. Sittambalam, Coordinator and Lawyer.
- Magistrate of Negombo, Negombo. October 2001. Interview with M.N. Buran, Magistrate of Negombo.
- Magistrate of Vavuniya, Vavuniya. October 2001. Interview with M. Ilancheliyan, Magistrate of Vavuniya.
- National Human Rights Commission (NHRC) of Sri Lanka, Colombo. October 2001. Interview with N. Selvakkumaran, Commissioner.
- _____, Vavuniya. October 2001. Interview with S. Ravindran, Regional Coordinator.
- Poonthoddam Welfare Centre I, Vavuniya. October 2001. Interview with S. Gopalakrishnan, Officer-in-Charge.
- President's Committee on Unlawful Arrests and Harassment (PCUAH), Colombo. October 2001. Interview with Batty Weerakoon, Committee Chair and Minister of Justice.
- _____, Colombo. October 2001. Interview with Lakshman Jayakody, Coordinator.
- Rural Development Foundation (RDF), Mannar. October 2001. Interview with P. Jeevaratnana, Office Coordinator.
- Sri Lanka Police (SLP), Vavuniya. October 2001. Interview with Chandra Sekara, Superintendent (Population Control).
- United Nations High Commissioner for Refugees (UNHCR). October 2001. Interview with representatives who did not wish to be identified in the report.

APPENDIX 1: Notes on Selected Sources

Bishop, Roman Catholic Diocese of Mannar

The Bishop of Mannar is a well-known human rights activist. In addition to his involvement in the Human Rights Citizens Committee of Mannar, he has publicised numerous cases of alleged human rights violations by state security forces, as well as making representations to government officials, security forces commanders and human rights organisations regarding these incidents.

Centre for Human Rights and Development

This Sri Lankan non-governmental human rights organisation was established in 1997 with a mandate to provide free legal assistance, prevent torture and promote human rights awareness. The organisation has seven staff based in Colombo. Major funders include the Canadian High Commission and Christian Aid.

Family Rehabilitation Centre

This non-governmental organisation was established in May 1991 to assist to individuals suffering from physical and/or psychological problems as a result of the armed conflict; to provide training to those working with torture survivors; to promote ethnic harmony; and to rehabilitate young people exposed to conflict-related violence. The organisation has nine regional centres and a head office in Colombo. Major funders include the Danish Agency for Development Assistance (DANIDA) (through the Rehabilitation and Research Centre for Torture Victims (RCT), based in Copenhagen, Denmark), the United Nations Voluntary Fund for Victims of Torture in Geneva, the Sri Lanka Canada Development Fund, the Asia Foundation, Colombo, CARE International and UNHCR.

Forum for Human Dignity

This non-governmental human rights organisation was founded in 1997. Its activities include the operation of a documentation centre and the provision of legal assistance to victims of human rights abuses. Major funders include Danchurch Aid.

Government Agent

Each district in Sri Lanka is administered by a Government Agent who is appointed by the central government in Colombo. Government Agents are responsible for coordinating and planning district-level activities to assist internally displaced persons.

Home for Human Rights

This non-governmental organisation, based in Colombo, is mandated to promote and protect human rights, particularly in the North and East. It is also involved in legislative advocacy. It has approximately 50 staff-members, of whom 17 are legal officers. Major funders include Bread for the World and Cordaid.

INFORM

This non-governmental organisation operates a human rights documentation centre, as well as being engaged in freedom of information issues and constitutional reform. It has a staff of eight, all of whom are based in Colombo. The organisation also maintains a network of informants in northern and eastern regions of the country. Major funders include the Norwegian Development Agency (NORAD), the Swedish International Development Cooperation Agency (SIDA) and the Embassy of The Netherlands (NOVIB).

Institute of Human Rights

This non-governmental organisation was incorporated in 1996. It provides legal assistance to victims of human rights abuses, as well offering training to those working in the field of human rights. Based in Colombo, the organisation has desk offices in Ampara, Batticaloa, Jaffna, Trincomalee and Vavuniya. Major funders include NOVIB, NORAD, the Canadian International Development Agency (CIDA) and the Embassy of Australia.

Legal Aid Foundation

A collaborative venture between the Bar Association of Sri Lanka and the United Nations High Commissioner for Refugees, the Legal Aid Foundation was established in September 2001 to provide free legal assistance to internally displaced persons in the Vavuniya area.

Magistrate

Appointed on a district-by-district basis, Magistrates preside over district court proceedings as well as shouldering such responsibilities as visiting places of detention at least once a month.

National Human Rights Commission (NHRC)

The NHRC was established by an act of parliament in 1996. With 11 regional offices country-wide, the Commission has responsibility for the monitoring and investigation of human rights violations. The Commission is constituted by five members, three of whom are Sinhalese, one Tamil and one Muslim. Additional information on the NHRC may be found in section II.4.1.

President's Committee on Unlawful Arrests and Harassment (PCUAH)

Also known as the Anti-Harassment Committee, the PCUAH is a cabinet-level committee responsible for investigating complaints arising from the activities of state security forces. It is constituted by members of parliament, including Tamils, opposition party representatives and senior ministers. Additional information on the PCUAH may be found in section II.4.2.

Rural Development Foundation

This non-governmental organisation assists internally displaced persons through the execution of humanitarian and development projects. It receives funding from the Danish Refugee Council.

APPENDIX 2: *Map of Sri Lanka*

APPENDIX 3: ***PTA, Prevention of Terrorism Regulations, No. 2 of 2001***

***APPENDIX 4: Parliament of the Democratic Socialist Republic of Sri Lanka:
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
or Punishment Act, no. 22 of 1994***

APPENDIX 5: President's Committee on Unlawful Arrests and Harassment. 10 October 2001. Performance Report.

APPENDIX 6: Government Agent of Vavuniya. August 2001. Situation Report as of 31.08.2001: Categories of Vavuniya Passes

